161 U.S. 247

161-247

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 129.

JANE LYNCH, APPELLANT,

vs.

CHRISTEINA MURPHY, EXECUTRIX, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 30, 1892.

(15,068.)

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a *Caption.*

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *vs.* JANE LYNCH, MILLARD F. LYNCH, MARY Ann Bartlett, Sarah R. Kahl, John Penn Jones, Brainard H. Warner, George E. Emmons, Edward Marsh, a Minor; Florence Marsh, a Minor; Joseph R. Murphy, Catherine G. Paul, John W. Murphy, and Samuel E. Murphy, a Minor.	In Equity. No. 11397, Docket 28.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed Oct. 18, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *vs.* JANE LYNCH, MILLARD F. LYNCH, MARY Ann Bartlett, Sarah R. Kahl, John Penn Jones, Brainard H. Warner, George E. Emmons, Edward Marsh, a Minor; Florence Marsh, a Minor; Joseph R. Murphy, Catherine G. Paul, John W. Murphy, and Samuel E. Murphy, a Minor.	In Equity. No. 11397, Docket 28.

To the supreme court of the District of Columbia, holding a special term in equity:

The complainant states:

I. That she is a resident of the city of Washington, in the District of Columbia, and brings this suit in her own right and as executrix and trustee under the will of Peter Pippert, as hereinafter stated.

2 II. The defendants are all residents of the District of Columbia and are all sued in their own right except Brainard H. Warner and George E. Emmons, who are sued as trustees under the deed of trust described in the eighth paragraph of this bill, and Mary R. Bartlett and Sarah R. Kahl, who are sued as the heirs-at-law of William W. Bean, trustee under the deed of trust, so called,

described in the 6th paragraph of this bill. All the defendants are adults except Edward Marsh, who will be twenty-one years of age on the 4th day of September, 1889, and Florence Marsh, who will be eighteen years of age on the 19th day of May, 1889, and Samuel Murphy, who is over twenty but under twenty-one years of age.

III. On the 27th day of July, A. D. 1874, one Peter Pippert was the owner in fee-simple and was in possession of all those pieces or parcel- of land in the city of Washington, in the District of
3 Columbia, distinguished upon the ground plan of said city as lots one (1), two (2), three (3), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18), in square numbered seven hundred and seventy-nine, containing in the aggregate fifty-seven thousand three hundred and eighteen (57,318) square feet.

IV. On the 27th day of July, 1874, said Peter Pippert (with his wife, Mary Pippert) executed and acknowledged a deed purporting to convey said real estate to one Elizabeth A. English, of East Saginaw, Michigan, and one Andrew Schwartz, Senior, of the city of Washington, in the District of Columbia. Said deed was delivered on said day by said Peter Pippert to one Alexander English, who represented himself to be the husband of said Elizabeth A. English, and it was by said English on the following day filed with the recorder of deeds of the District of Columbia, and is recorded in Liber 759, at folio 49 *et seq.*

4 A copy of said deed is hereto appended, marked "Exhibit C. M. 1," and made part hereof. A deed of the same date, recorded in Liber 759, at folio 68, of said land records, purporting to be executed and acknowledged by said Elizabeth A. English by said Alexander English as her attorney, and by said Andrew Schwartz, Senior, and Mary Ann Schwartz, his wife, purports to convey to one Andrew Schwartz, Junior, and one F. E. Lackey the said property in trust to secure the payment to said Peter Pippert of the sum of ten thousand three hundred and ninety $\frac{42}{100}$ ($10,390.42) dollars, represented, as stated in said deed, by nine promissory notes in the sum of one thousand dollars each and one promissory note in the sum of thirteen hundred and ninety $\frac{42}{100}$ dollars, said notes to mature from three to thirteen years after date. A copy of said deed of trust is hereto appended, marked "Exhibit C. M. 2," and made part hereof.

5 V. On the 7th day of April, 1875, said Peter Pippert filed on the equity side of this court a bill against said Alexander English, said Elizabeth A. English, said Andrew Schwartz, Senior, said Mary Ann Schwartz, said Andrew Schwartz, Junior, and said F. E. Lackey, in which said bill said Pippert charged that said deed from him to said Elizabeth A. English and said Andrew Schwartz, Senior, had been obtained by fraud, and that he had been induced by fraud to accept said deed of trust, and in and by which bill said Pippert prayed, among other things, that said deed from him to said Elizabeth A. English and said Andrew Schwartz, Senior, might be decreed null and void. Process was duly issued in said case against all the defendants

therein, and they were all duly served with process and filed answers in the case except said Alexander English and said Elizabeth A. English, as to whom the marshal of the District of Columbia returned the summons, "Not to be found." Thereafter an
6 order of publication against said defendants, Alexander English and Elizabeth A. English, was duly made in said cause and published according to law; and thereafter and after the time within which said Alexander English and said Elizabeth A. English were required by law to answer said bill a decree *pro confesso* was duly taken against them in said cause, to wit, on the 8th day of July, 1875. Thereafter the cause was regularly placed upon the calendar of this court and came on for final hearing on the 11th day of October, A. D. 1875, and on that day a decree was made in said cause by this court in special term in equity that both said deed from said Peter Pippert to said Elizabeth A. English and said Andrew Schwartz, Senior, and said deed of trust purporting to be executed in the name of said Elizabeth A. English (by said Alexander English, as her attorney) and said Andrew Schwartz, Senior, and Mary Ann Schwartz, his wife, were declared to be utterly
7 null and void; said cause is numbered 4266 on the equity docket of this court, and the pleadings and proceedings in said case are made a part of this bill.

VI. There is recorded in the land records of said District, in Liber 760, folio 159, a deed of trust purporting to be executed and acknowledged by said Elizabeth A. English (by her attorney, A. English), which said last-mentioned deed is dated the 26th day of August, 1874, and purports to have been acknowledged by said Elizabeth A. English (by A. English, her attorney) before a justice of the peace in the District of Columbia on the 29th day of August, 1874. A copy of said deed is hereto appended, marked "Exhibit C. M. 3," and made part hereof. In said instrument it is recited that Elizabeth A. English is justly indebted unto James Lynch in the sum of four thousand dollars, and that she has passed to him her four promissory notes of even date with said deed, payable, respectively, July 15,
8 1875, July 15, 1876, July 15, 1877, and July 15, 1878, with interest at six per cent, payable semi-annually at the Bank of Washington, in the city of Washington, in the District of Columbia; and it is further recited therein that said Elizabeth A. English, being desirous of securing the payment of said notes, conveys to said William W. Bean, his heirs and assigns, all of the hereinabove-described real estate in trust to permit said Elizabeth A. English, her heirs and assigns, to occupy the same until default be made in the payment of said indebtedness or any part thereof, and upon the payment of said debt and expenses to reconvey the property to her, and upon default being made in the payment of said notes or any part thereof or any expenses connected with the trust to sell the said real estate at public auction and convey the same in fee-simple to the purchaser or purchasers thereof, and from
9 the proceeds to pay the expenses and what may remain un-

paid of said notes, and the remainder, if any, to pay to said Elizabeth A. English.

VII. William W. Bean, the grantee named in said last-mentioned deed of trust, departed this life on the 16 day of June, 1882, childless and intestate. The defendants Mary Bartlett and Sarah R. Kahl are his sisters and are his sole heirs-at-law. James Lynch, the person to whom said last-mentioned deed of trust purports to secure the payment of four thousand dollars and interest as aforesaid, departed this life on the — day of ——, 18—, intestate. The defendant Jane Lynch is his widow, and the defendant Millard F. Lynch is his only child, and said Jane Lynch and Millard F. Lynch are the persons entitled as distributees to the personal estate of said James Lynch; but the said Jane Lynch claims that the said four promissory notes described in said last-mentioned deed of trust
10 were transferred to her by her husband, the said James Lynch, during his lifetime, and she now asserts that she is the sole owner thereof.

Upon information and belief the complainant avers that the said James Lynch gave no consideration for said notes, and that neither the said Elizabeth A. English nor the said Alexander English received any consideration therefor; but the complainant avers upon information and belief that, on the contrary, said deed of trust to said William W. Bean and the four promissory notes described therein are part and parcel of the scheme by which said Alexander English attempted to defraud the said Peter Pippert, as set out in the bill in equity aforesaid.

Upon information and belief complainant avers that said Alexander English was without any proper or competent authority in law to execute said deed of trust to said William W. Bean in the name of said Elizabeth A. English; yet the said Jane Lynch
11 threatens to enforce the said deed of trust, and upon information and belief complainant avers that unless she and the said Mary Ann Bartlett and the said Sarah R. Kahl shall be restrained by this honorable court they will advertise said real estate for sale under said last-mentioned deed of trust and will proceed to sell the same, thereby throwing a further cloud upon the title to said real estate.

VIII. By a deed dated the 21st day of December, 1886, which was recorded on the 22nd day of December, 1886, in Liber 1224, folio 205, of the land records of said District, said Peter Pippert conveyed to the defendants Brainard H. Warner and George E. Emmons all of said real estate in trust to secure the payment to one Clarence B. Rheem of seven promissory notes of the said Peter Pippert, of even date with said deed, all payable to the order of said Clarence B. Rheem, under the name of C. B. Rheem, one of said notes being in the sum of one thousand dollars, payable three years after date, and the
12 remaining six of said notes being for thirty dollars each and payable respectively in six, twelve, eighteen, twenty-four, thirty, and thirty-six months after date, the six notes in question being for the interest upon the said note for one thousand dollars. Two of said notes, the first to mature, have been paid. The other four in-

terest notes and the principal note are still wholly unpaid. All of said unpaid notes are now owned and held by the defendant John Penn Jones. Upon information and belief the complainant avers that said John Penn Jones is willing that all of said unpaid notes shall be taken up and discharged at any time before maturity. A copy of said deed of trust to said Warner and Emmons is hereto appended, marked "Exhibit C. M. 4," and made part hereof.

8½. Said Peter Pippert departed this life on the 21st day of February, 1887, testate. Said Peter Pippert was a widower at
13 the time of his death and the complainant is his child and the only one of his children who survived him. The defendants Edward Marsh and Florence Marsh are grandchildren of the said Peter Pippert. The defendants Joseph R. Murphy, Catharine G. Paul, John W. Murphy, and Samuel E. Murphy are not related to the said Peter Pippert, but are the children (by a former wife) of John Henry Murphy, who is the complainant's husband. Had the said Peter Pippert died intestate this complainant and the defendants Edward Marsh and Florence Marsh would have been entitled to the entire estate of said Peter Pippert as his heirs and next of kin.

IX. The will of said Peter Pippert was duly filed, proved, and admitted to probate in this honorable court, holding a special term for the transaction of orphans' court business, on the 4th day of March, 1887. By said will said Peter Pippert makes the
14 complainant his sole executrix and trustee of his estate. She accepted the office of executrix and trustee under said will, and letters testamentary were duly issued to her by this honorable court, holding a special term for the transaction of orphans' court business, on the 4th day of March, 1887, and she has since acted in that capacity; but said Peter Pippert at the time of his death owned no personal property whatever, and for that reason this complainant, as his executrix, has filed no account as executrix, and in lieu of an inventory has filed an affidavit that said Peter Pippert left no personal property.

X. A copy of the will of said Peter Pippert is hereto appended, marked "Exhibit C. M. 5," and made part hereof. By said instrument said Peter Pippert in substance devises to this complainant an undivided one-half interest in the real estate hereinabove described, and devises the other undivided one-half interest in
15 said real estate to the defendants Edward Marsh and Florence Marsh, share and share alike. Said will further gives power to the complainant to sell said real estate, and gives her large discretionary power as to the time when said Edward Marsh and the said Florence Marsh shall receive their share of the proceeds of said real estate; but although complainant is advised and therefore avers that the foregoing is the true effect of said will, yet the same is inartificially drawn throughout and is in some respects uncertain and ambiguous, and the complainant, being a woman of little education and of no experience in business matters, desires henceforth to exercise her duties as executrix and trustee under said will under the immediate supervision and direction of this honor-

able court, in order that whatever questions may arise as to the construction of said will may be passed upon by this honorable court before any responsibility thereunder shall be incurred by this
16 complainant.

By said will said Peter Pippert bequeathes to the defendant Joseph R. Murphy the sum of two hundred dollars; to the defendant Catharine G. Paul the sum of two hundred dollars; to the defendant John W. Murphy the sum of two hundred dollars, and to the defendant Samuel E. Murphy the sum of two hundred dollars. Said will also contains a bequest to Charles H. Murphy in the sum of two hundred dollars. Said Charles H. Murphy was also one of the children of said John Henry Murphy, but he departed this life on the 3rd day of May, 1887, when only fifteen years of age, childless and unmarried, and the complainant is advised that under the terms of said will the amount bequeathed to him by said will is to be distributed equally among the other children of said John Henry Murphy, defendants hereto, named in said will.

XI. The general taxes on said real estate have not been
17 paid since the year 1885, and there is now due three years' taxes, amounting to one hundred and forty-eight $\frac{79}{100}$ dollars, with interest. There are also assessed against said real estate special taxes for alleged improvements of the streets surrounding the same, amounting, as charged in the books in the office of the collector of taxes in the District of Columbia, to over twenty-five hundred dollars. The complainant upon information and belief avers that said special assessments are in a large part illegal, and she hopes to be able to adjust the same with the District of Columbia for a considerable less sum than twenty-five hundred dollars, but after making reasonable deductions there will still be due the District of Columbia on account of said special assessments a large sum of money. All the special taxes aforesaid have been carrying interest for a number of years at the rate of ten per cent. per annum, but by an act of Congress of the United States passed during
18 the present session if said taxes shall be paid on or before the 1st day of November, 1888, the amount of the original tax, with only six per cent. interest per annum added thereto, will be accepted as full payment for the same, whereas if they should not be paid on or before said day ten per cent. interest will be charged thereon. The complainant, in her own right and as executrix and trustee as aforesaid, is entirely without means. She has been unable to raise money upon the security of said real estate for the purpose of paying said taxes or any part thereof, for the reason that the deed of trust to said William W. Bean, of which Exhibit C. M. 3 hereto is a copy, operates as a cloud upon the title of all of said real estate and deters persons who have money to invest from accepting said real estate as security. For the same reason complainant has been unable to properly provide for her own maintenance
19 and for the maintenance of said Edward Marsh and said Florence Marsh, who, with said Samuel E. Murphy, have resided with the complainant and her said husband ever since the death of said Peter Pippert; and by reason of the premises there

is great danger that all of said real estate will be sold by the District of Columbia for the purpose of enforcing the payment of the taxes aforesaid, general and special, and thereby this complainant and the said Edward Marsh and said Florence Marsh will lose all benefit of the provision made for them respectively in said will of said Peter Pippert.

20 The complainant, therefore, being without any adequate remedy at law, humbly prays:

First. That the defendants Jane Lynch, Millard F. Lynch, Mary Ann Bartlett, and Sarah R. Kahl may be enjoined pending this suit and perpetually thereafter from taking any steps looking to the enforcement of the terms of the deed of trust of which Exhibit C. M. 3 hereto is a copy.

Second. That the said deed of trust of which Exhibit C. M. 3 hereto is a copy may be declared to be null and void, or that if the court shall be of opinion that said deed is valid that the deed of trust of which Exhibit C. M. 2 hereto is a copy may be reinstated and made good as against the defendants Jane Lynch, Millard F. Lynch, Mary Ann Bartlett, and Sarah R. Kahl.

Third. That provision may be made pending this suit for the payment of said taxes, general and special, or of so much

21 thereof as may appear to be a proper charge against said real estate, and also for the payment of the amount due said John Penn Jones secured by the deed of trust of which Exhibit C. M. 4 hereto is a copy, and that this may be done either by authorizing a sale *pendente lite*, clear of all encumbrances and claims in favor of any of the parties to this suit, of said real estate or so much thereof as may be necessary, or by authorizing the complainant or some person to be specially appointed for that purpose to raise money for the purpose of paying said taxes and the amount due said John Penn Jones as aforesaid by mortgaging said real estate or so much thereof as may be necessary, such mortgage to have priority over the encumbrances or other claims held or owned by any of the parties to this suit.

Fourth. That at the final hearing of this cause a decree may be made for the sale of all of said real estate or so much thereof

22 as may have remained unsold, and that the complainant, as executrix and trustee as aforesaid, may receive such directions as to the disposition of the proceeds of said real estate may be necessary to carry out the intent of said Peter Pippert as manifested in his said will, and to that end that the terms of said will shall be construed and their meaning made plain.

Fifth. That the writ of subpœna may be issued addressed to the defendants in this case and each of them, requiring them to appear at some certain day to be named therein to answer the premises and to abide by and perform such order and decree as may be made herein, and for such other and further relief as to the court shall seem meet.

The defendants to this bill are Jane Lynch, Millard F. Lynch,

Christeina Murphy, Mary Ann Bartlett, Sarah R. Kahl,

23 John Penn Jones, Brainard H. Warner, George E. Emmons,

Edward Marsh, a minor; Florence Marsh, a minor; Joseph R. Murphy, Catharine G. Paul, John W. Murphy, and Samuel E. Murphy, a minor.

WORTHINGTON & HEALD,
Sol'rs for Compl't.

I, Christeina Murphy, on oath say that I have heard read the foregoing bill of complaint by me subscribed and know the contents thereof, and that the statements therein made upon my own knowledge are true, and that the statements therein made as upon information and belief I believe to be true.

CHRISTEINA MURPHY.

Subscribed & sworn to before me this 13th day of October, A. D. 1888.

[SEAL.] J. D. COUGHLAN,
Notary Public.

24 CHRISTEINA MURPHY *vs.* JANE LYNCH *et al.* } In Equity. No. —, Docket —.

I, Christeina Murphy, on oath say that I am utterly unable to make the deposit required by law in instituting a suit in the supreme court of the District of Columbia. The filing of the bill in the above-entitled cause has been delayed for several months while I have been trying to raise the money to pay the necessary expenses of beginning the suit, but I have been unable to do so. I further say that I have endeavored for several months to raise the money to pay the costs taxed in the case of Christeina Murphy *vs.* Mary Bartlett *et al.*, numbered 10496 on the equity docket of this court, so that the order dismissing the said case, which has heretofore been signed by the solicitors of all the parties to said cause, might be entered, but I have been unable to do so, and cannot now pay said costs.

CHRISTEINA MURPHY.

Subscribed & sworn to before me the 13th day of October, 1888.

J. D. COUGHLAN,
Notary Public.

25 *Order to File without Payment of Costs.*

OCTOBER —, 1888.

Let the bill in this case be filed without payment of deposit and enter the order dismissing the case of Christeina Murphy *vs.* Mary Bartlett *et al.*, No. 10496, in equity, without payment of costs.

CHARLES P. JAMES, *J.*

Summons to Answer. Issued Oct. 18, 1888.

In the Supreme Court of the District of Columbia, October 18th, 1888.

CHRISTEINA MURPHY, Complainant,
against
JANE LYNCH *et al.*, Defendant-. } No. 11397, Equity Docket 28.

The President of the United States to Edward Marsh, Florence Marsh, & Samuel E. Murphy, defendants:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna
26 and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[SEAL.] R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS, *Ass't Clerk.*

MEMORANDUM.—That the defendant- herewith served *is* to enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Served, Florence Marsh, October 18, 1888; Edward Marsh & Samuel E. Murphy, October 19th, 1888.

A. A. WILSON, *Marshal.*

27 EXHIBIT C. M. No. 1.

Filed Oct. 18, 1888. R. J. Meigs, clerk.

This indenture, made this twenty-seventh day of July in the year of our Lord one thousand eight hundred and seventy-four by and between Peter Pippert and Mary M. Pippert his wife of Washington city and District of Columbia, of the first part, and Elizabeth A. English of East Saginaw, Michigan and Andrew Schwartz of Washington city, District of Columbia parties of the second part.

Witnesseth, that the said parties of the first part, for and in consideration of the sum of ten thousand eight hundred and ninety dollars and forty cents, in lawful money of the United States to them in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said parties
28 of the second part, their heirs and assigns forever in the following manner (that is to say) three-fourths of the herein-con-

veyed ground and premises to said Elizabeth A. English and one fourth to the said Andrew Schwartz, Sr., the ground conveyed to them in an undivided state and condition, all of the east half of square number seven hundred and seventy-nine (779) embracing lots No. one (1) two (2) three (3) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) and eighteen (18) of said square as laid down in the plat or plan of said Washington city, District of Columbia, containing fifty-seven thousand three hundred and eighteen (57,318) square feet of ground more or less together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the remainder, reversions, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand, either
29 at law or in equity, or otherwise however, of the said parties of the first part, of, in, to or out of the said described real estate and premises.

To have and to hold, the said described real estate and premises and appurtenances unto the said parties of the second part their heirs and assigns to their and their sole use, benefit and behoof forever.

And the said Peter Pippert and his wife Mary M. Pippert *be* themselves their heirs, executors and administrators do hereby covenant, promise and agree to and with the said parties of the second part their heirs and assigns, that they the said parties of the first part and their heirs, shall and will warrant and forever defend the said described real estate and premises and appurtenances unto the said parties of the second part their heirs and assigns, from and against the claims of all persons claiming or to claim the
30 same or any part thereof, by, from, under or through them or any of them.

And further, that the said parties of the first part and their heirs, shall and will, at any and at all times hereafter, upon the request and at the cost of the said parties of the second part their heirs or assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said described real estate and premises and appurtenances unto the said parties of the second part their heirs and assigns, as the said parties of the second part their heirs or assigns, or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

PETER PIPPERT. [SEAL.]

her
MARY M. x PIPPERT. [SEAL.]
mark.

Signed, sealed and delivered in presence of—

AMOS HUNT.

31 DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, Amos Hunt, a justice of the peace in and for the said county and District, do hereby certify that Peter Pippert and Mary M. Pippert, his wife, parties to a certain deed bearing date on the 27th day of July, A. D. 1874, and hereto annexed, personally appeared before me, in the said District, the said Peter Pippert and Mary M. Pippert, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary M. Pippert, his wife, being by me privately examined and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

32 Given under my hand and seal this the 27th day of July, A. D. 1874.

AMOS HUNT, *J. P.* [SEAL.]

EXHIBIT C. M. No. 2.

This indenture, made this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and seventy-four, between Elizabeth A. English of East Saginaw, Michigan, Andrew Schwartz Sr. and Mary Ann Schwartz his wife of Washington D. C. parties of the first part, and Andrew Schwartz, Jr. and F. E. Lackey trustees, of Washington city D. C., parties of the second part:

Whereas the said Elizabeth A. English and Andrew Schwartz Sr. are justly indebted unto Peter Pippert of Washington city D. C. in the full sum of ten thousand three hundred and ninety dollars and forty-two cents ($10,390.42) for which amount the said Eliza-

33 beth A. English and Andrew Schwartz have given their ten several notes of hand on interest at the rate of 7 per cent. per annum and the interest due and payable semi-annually from and after date the notes dated July 27, 1874, the nine first notes being for $1,000 each and the last or tenth note being for $1,390.42; the first note falls due and is payable three years from and after date, the next for four years and so on annually thereafter till the whole ten notes are paid and the interest at seven per cent. per annum is due and payable semi-annually on the whole amount from date and the said English and Schwartz desiring to secure the punctual payment of said note execute this indenture.

Now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar, in lawful money of the United States, to them in hand paid by said parties of the

34 second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said parties of the second part, their

heirs and assigns, all the east half of square No. seven hundred and seventy-nine (779) embracing lots thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) one (1) two (2) three (3) of said square as laid down on *in* the plat or plan of Washington city D. C. containing fifty-seven thousand three hundred and eighteen square feet of ground be the same more or less, being the same ground and premises this day conveyed by Peter Pippert and Mary M. Pippert his wife to Elizabeth A. English of East Saginaw Michigan and Andrew Schwartz Sr. of Washington city D. C.
35 (three-fourths of the premises conveyed to said English and one-fourth to said Schwartz), together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said described real estate and premises.

The have and to hold the said described real estate and premises with the appurtenances unto and to the use of the said parties of the second part, the survivor of them, his heirs and assigns.

In and upon the trusts nevertheless, hereinafter mentioned and declared, that is in trust to permit the said Elizabeth A. English and Andrew Schwartz Sr. their heirs or assigns to use and occupy the said described premises, and the rents, issues, and profits thereof, to take, have, and apply, to and for their sole use and
36 benefit, until default be made in the payment of said notes of indebtedness, or any proper cost, charge, commission, half commission or expense in and about the same

And upon full payment of all of said notes and the interest thereon and all other proper costs, charges, commissions, half commissions, and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises, unto the said English & Schwartz Sr. their heirs or assigns, at their cost.

And upon this further trust, that upon default being made in the payment of the said notes of indebtedness, or any proper cost, charge, commission, half commission, insurance or other proper expense in and about the same, then and at any time thereafter, to sell the said described real estate and premises, at public auction, upon such terms and conditions and at such time and
37 place and after such previous public advertisement as the said party of the second part their heirs or the trustee acting in the execution of this trust, shall deem advantageous and proper to convey the property sold in fee-simple to and at the cost — the purchaser or purchasers thereof who shall not be required to see to the application of the purchase-money, and of the proceeds of said sale or sales, first, to pay all proper costs, charges and expenses, and to retain as compensation a commission of five per cent. on the amount of said sale or sales; secondly, to apply said purchase-money to the payment of whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not;

and lastly, to pay the remainder, if any, to said English & Schwartz Sr. executors, administrators or assigns.

38 And the said English & Schwartz, Sr. do hereby agree at their own cost during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled to keep the said improvements insured against fire in the name and to the satisfaction of said parties of the second part who shall pay whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any default or neglect to so insure any party secured hereby may have said improvements insured and the expense thereof shall be a charge hereby secured and bear like interest as the matter secured.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

ELIZABETH A. ENGLISH, [SEAL.]
By A. ENGLISH, *Her Attorney.*
A. SCHWARTZ, SR. [SEAL.]
MARY ANN SCHWARTZ.

Signed, sealed, and delivered in the presence of—
AMOS HUNT.

39 DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, Amos Hunt, a justice of the peace in and for said District, in said county, do hereby certify that Elizabeth A. English, by A. English, her attorney; Andrew Schwartz, Sr., and Mary Ann Schwartz, his wife, parties to a certain deed bearing date on the 27th day of July, A. D. 1874, and hereunto annexed, personally appeared before me, in said District, the said Elizabeth A. English, by A. English, her attorney; Andrew Schwartz, Sr., and Mary Ann Schwartz, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Mary Ann Schwartz, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and my seal this 27th day of ——, A. D. 1874.

AMOS HUNT, *J. P.* [SEAL.]

40 EXHIBIT C. M. No. 3.

Filed Oct. 18, 1888. R. J. Meigs, clerk.

This indenture, made this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and seventy-four by and between Elizabeth A. English of East Saginaw, Michigan party of

the first part, and William W. Bean of the city of Washington and District of Columbia, party of the second part witnesseth:

Whereas, the said Elizabeth A. English is justly indebted unto James Lynch in the full sum of four thousand dollars, for which amount she has this day passed to the said Lynch her four certain promissory notes, bearing even date herewith, and payable as follows: One thousand dollars on July 15th 1875; one thousand dollars on July 15th 1876; one thousand — on July 15, 1877, and one thousand dollars on July 15 1878, with interest at 6% payable semi-annually at the Bank of Washington in the city of Wash-
41 ington D. C.

And the said party of the first part being desirous to secure the full & prompt payment of said notes with all interest costs and expenses that may accrue thereon, have agreed to execute these presents.

Now therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the premises aforesaid, and further, the sum of one dollar, in lawful money of the United States, to her in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and does by these presents, grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, his heirs and assigns all of her right title interest and claim in and to the following-described pieces and parcels of ground, situated and lying in the city of Washington,
42 D. C. and being designated and described upon the map or plan of the said city as follows, that is to say three-fourths of the following-described pieces or parcels of ground: All of the east half of square number seven hundred and seventy-nine (779) embracing lots number one (1) two (2) three (3) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) and eighteen (18) containing fifty-seven thousand three hundred and eighteen (57,318) square feet of ground.

Together, with all the improvements, ways, easements, rights, privileges, and appurtenances, to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said party of the first part, of, in, to, or out of the said described real estate and premises.

To have and to hold, the said described real estate and
43 premises and appurtenances, unto, and to the use of the said party of the second part, his heirs and assigns.

In and upon the trusts nevertheless, hereinafter mentioned and declared that is, in trust, to permit the said Elizabeth A. English her heirs and assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof, to take, have, and apply to and for her sole use and benefit, until default be made in payment of said notes or expenses in and about the same.

And upon the full payment of all of said notes and the interest thereon, and all other proper costs, charges, commissions, half com-

missions, and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Elizabeth A. English her heirs or assigns, at her or their cost.

And upon this further trust, that upon default being made
44 in the payment of the said note or notes or interest thereon or any proper cost, charge, commission, half commission, or expense in and about the same, then and at any time thereafter, to sell the said described real estate and premises, at public auction, upon such terms and conditions, and at such time and place, and after such previous public advertisement, as the said party of the second part, his heirs or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, first to pay all proper costs, charges, and expenses, and to retain as compensation, a commission of 5 per cent. on the amount of said sale or sales; secondly, to pay whatever may then remain unpaid
45 of the said notes and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Elizabeth A. English her executors, administrators or assigns.

And the said Elizabeth A. English does hereby agree at her own cost during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled to keep the said improvements insured against fire in the name and to the satisfaction of the party of the second part, who shall pay whatever may be received therefrom to the payment of the matter hereto secured whether due or not, and that upon any default or neglect to so insure any party secured hereby may have said improvements insured and the expense thereof shall be a charge hereby secured and bear live interest as the matter secured.

In testimony whereof, the said party of the first part has
46 hereunto set her hand and seal on the day and year first hereinbefore written.

ELIZABETH A. ENGLISH, [SEAL.]
By A. ENGLISH, *Her Attorney.*

Signed, sealed, and delivered in the presence of—
AMOS HUNT.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Amos Hunt, a justice of the peace in and for said District, in said county, do hereby certify that Elizabeth A. English, by A. English, her attorney, party to a certain deed bearing date on the 29 day of August, A. D. 1874, and hereunto annexed, personally appeared before me, in District aforesaid, the said Elizabeth A. English, by her attorney, A. English, being personally well known

to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and my seal this 31st day of August,
47 A. D. 1874.

AMOS HUNT, *J. P.* [SEAL.]

"EXHIBIT C. M. 4."

Filed Oct. 18, 1888. R. J. Meigs, clerk.

This indenture, made this twenty-first day of December, in the year of our Lord one thousand eight hundred and eighty-six, between Peter Pippert (widower) of the city of Washington in the District of Columbia of the first part, and Brainard H. Warner and George E. Emmons of the city of Washington, D. C., of the second part:

Whereas the said Peter Pippert stands justly indebted unto C. B. Rheem in the sum of one thousand ($1,000) dollars for money loaned and advanced for which sum he has executed and delivered to the said C. B. Rheem and made payable to the order of the said Rheem,
his said Pippert's promissory note of even date herewith and
48 falling due and payable three (3) years after date with interest thereon at the rate of six (6) per cent. per annum payable semi-annually, which said interest is evidenced by the six (6) several notes of the said Peter Pippert of even date herewith payable to the order of the said Rheem each of said interest notes for the sum of thirty (30) dollars falling due and payable after date respectively in six (6) twelve (12) eighteen (18) twenty-four (24) thirty (30) and thirty-six (36) months and being desirous to secure the punctual payment of said notes when and as the same shall respectively become due and payable, with all interest and costs due and accruing thereon, as well as any renewals or extensions thereof:

Now, therefore, this indenture witnesseth, that the said party of
the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar, paid to him by said
49 parties of the second part, has granted, bargained, sold, aliened, enfeoffed, released and conveyed, and does by these presents, grant, bargain, and sell, alien, enfeoff, release and convey unto the said part- of the second part, and the survivor of them, his heirs and assigns, the following-described real estate, situate in the city of Washington, District of Columbia, to wit: All those certain pieces or parcels of land and premises known and distinguished as and being: all of original lots one (1) two (2) three (3), thirteen (13) fourteen (14), fifteen (15) sixteen (16) seventeen (17) and eighteen (18) in square numbered seven hundred and seventy-nine (779) being the same property comprised in and described in two (2) several deeds in fee-simple one from Thomas T. Anderson and wife to said Peter Pippert dated August 18, 1851, and recorded in
the land records for the District of Columbia in Liber J. A. S.
50 28 folio 431 *et seq.* conveying said lots one (1) two (2) three (3) and eighteen (18), and the other from Jonathan Prout and

wife to the said Peter Pippert dated May 25, 1857, and recorded in said land records in Liber J. A. S. 134 folio 324 *et seq.* conveying said lots thirteen (13) fourteen (14) fifteen (15) sixteen (16) and seventeen (17), together with all the easements, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever whether at law or in equity, of the said party of the first part, of, in, to, or out of the said pieces or parcels of land and premises.

To have and to hold the said pieces or parcels of land and premises with the appurtenances unto and to the use of the said parties of the second part and the survivor of them, his heirs and assigns.

51 In and upon the trusts nevertheless, hereinafter mentioned and declared, that is in trust to permit the said Peter Pippert his heirs or assigns to use and occupy the said described premises, and the rents, issues, and profits thereof, to take, have, and apply, to and for his and their sole use and benefit, until default be made in the payment of said notes, either or any of them or any installment of interest due thereon, or any proper cost, charge, commission, half commission or expense in and about the same.

And upon full payment of all of said notes and any extensions or renewals thereof, and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses incurred by means of these trusts, at any time before the sale hereinafter provided for to release and reconvey the said described

52 premises, unto the said Peter Pippert, his heirs or assigns, at his or their cost.

And upon this further trust, that upon default being made in the payment of any of said promissory notes at maturity, or any installment of interest due thereon, or any proper cost, charge, commission, half commission, insurance, taxes or other proper expense in and about the same, then and at any time thereafter, to sell the said pieces or parcels of land and premises, or any portion thereof, at public auction, in front of the premises, after at least ten days' notice of the time, place and terms of sale, by advertisement in some one or more of the newspapers printed and published in the city of Washington, upon such terms and conditions as the said trustees, or the survivor of them, may deem most advantageous to the parties interested; and with further power to postpone the

53 sale from time to time in their or his discretion, and to resell on default of the purchaser.

And upon this further trust, upon full compliance with the terms of sale to convey the property sold in fee-simple to the purchaser or purchasers thereof, at his, her or their cost and expense, and without any liability to see to the application of the purchase-money, and out of the proceeds of said sale or sales, first, to pay all proper costs, charges and expenses, and to retain as compensation a commission of five per cent. on the amount of said sale or sales; secondly, to apply said purchase-money to the payment of whatever may then remain unpaid of the said notes and the interest thereon to the time of said sale, whether the same shall be due or not; and

lastly, to pay the remainder, if any, to the said Peter Pippert his heirs or assigns.

And the said party of the first part doth hereby covenant
54 with the parties of the second part, the survivor of them, his heirs and assigns, that all taxes upon the said lands shall be duly paid, and that the building on said parcels of land shall be kept insured by the said party of the first part, during the continuance of this trust, in some good and responsible fire insurance company or companies, to the satisfaction of the parties of the second part in the sum of at least one thousand ($1,000) dollars, and the policy or policies of insurance be assigned to the said parties of the second part as trustees under these presents; and further, that in case the said Peter Pippert his heirs or assigns shall fail to pay taxes or keep said property so insured and assigned, the holder of said notes, or either of them, the policy to be assigned to the trustees hereunder and the amount of taxes and premium paid shall be con-
55 sidered a part of the expense of said debt secured hereby and shall bear the same rate of interest as the principal debt in default of payment of which the said parties of the second part, the survivor of them, his heirs and assigns, shall have power to sell said property hereby conveyed as aforesaid, and shall dispose of the proceeds of sale as hereinbefore provided.

And it is further agreed that if the property shall be advertised for sale under the provisions of the deed, and not sold, then the said trustees shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.

In testimony whereof, the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

PETER PIPPERT (*Widower*). [SEAL.]

Signed, sealed, and delivered in the presence of—

JAS. FORREST.

56 DISTRICT OF COLUMBIA, *ss:*

I, Joseph Forrest, a notary public in and for the District aforesaid, do hereby certify that Peter Pippert, party to a certain deed bearing date on the 21st day of December, A. D. 1886, and hereunto annexed, personally appeared before me in the District aforesaid, the said Peter Pippert being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 21st day of December, A. D. 1886.

[NOTARIAL SEAL.] JOSEPH FORREST.

57 EXHIBIT C. M. No. 5.

#2642, Doc. 13.

Filed Oct. 18, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

The United States of America to all persons to whom these presents shall come, Greeting:

Know ye that the last will and testament of Peter Pippert, late of the District of Columbia, deceased, hath in due form of law been exhibited, proved, and recorded in the office of the register of wills for the District of Columbia, a copy of which is to these presents annexed, and administration of all the goods, chattels, and credits of the deceased is hereby granted and committed unto Christeina Murphy, the executrix by the said will appointed.

Witness Wm. M. Merrick, justice, holding the special
58 term of the said supreme court for orphans' court business, this 4th day of March, in the year of our Lord one thou-
[SEAL.] sand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

Test: DORSEY CLAGETT,
Register of Wills for the District of Columbia.

I, Christeina Murphy, do swear that I will well and truly administer the goods, chattels, personal estate, and credits of Peter Pippert, late of the District of Columbia, deceased, to the best of my knowledge according to law, and will give a just account of my administration when thereto I shall be lawfully called, so help me God.

CHRISTEINA MURPHY.

59 Sworn and subscribed to before me this 4th day of March, A. D. 1887.

Test: DORSEY CLAGETT,
Register of Wills.

I, Peter Pippert, of Washington city, District of Columbia, mindful of the uncertainties of life do on this 7th (seventh) day of April eighteen hundred and eighty-six, make, publish and declare this instrument of writing to be my last will and testament for the purpose of carrying out the provisions hereinafter indicated.

1st. I give devise and bequeath to my daughter Christeina Murphy, her heirs or assigns, one-half interest (or one-half of the proceeds thereof) of all my real estate consisting of that parcel of ground lying and being situated in the city of Washington District of Columbia, known and designated on the plat and plan of said

city as the east half of square No. 779 (seven hundred and
60 seventy-nine) situated between E and F Sts. and 3rd and 4th
streets in the northeast section of Washington, together with the buildings thereon, with all the rights and privileges thereunto belonging, to be her exclusive right, to defend, maintain, sell or dispose of as she may herself determine; subject however to conditions hereinafter stated.

2nd. I also give devise and bequeath to my aforesaid daughter Christeina Murphy all and whatever rights, privileges and equities which I may possess or whatever shall be accorded me by the courts, in the property belonging to my deceased wife Welhelmenia Magdaline Pippert: located in Washington D. C. and known as No. 421 (four hundred and twenty-one) N. St. N. W.

3rd. I give devise and bequeath to my two grandchildren Edward Marsh and Florence Marsh, share and share alike, in
61 my real estate (or the proceeds thereof); that is to say, one-quarter each in the other interest of my real estate which I have heretofore described in the bequeast to my daughter Christeina Murphy (as set forth in paragraph 1:) subject however to conditions hereinafter stated.

4th. I give, devise and bequeath to the following persons, children of my son-in-law John Henry Murphy, the sum of two hundred dollars each, that is to say.

To Joseph R. Murphy—two hundred dollars.

To Catharine G. Paul (formerly Catharine G. Murphy)—two hundred dollars.

To John W. Murphy—two hundred dollars.

To Samuel E. Murphy—two hundred dollars.

To Charles H. Murphy—two hundred dollars.

Making a total of one thousand dollars, which sum shall be paid to the children of John Henry Murphy: (equally divided be-
62 tween them) or in case of the death of either of the said children of J. H. Murphy then the sum hereinabove stated shall be divided *pro rata* between said children; subject however to the conditions hereinafter stated.

5th. After my death I nominate and designate my daughter Christeina Murphy to select the officiating clergyman and make such necessary provisions as will insure a proper and genteel burial; I also authorize my aforesaid daughter to select a neat and substantial designation which shall be placed at my grave and have enclosed the lot in which I am buried with a suitable railing.

6th. It is my request and wish that the sale of my property shall not occur immediately after my death, or be imprudently disposed of to a disadvantage and that no final sale of my property shall occur until six months after my death; except such portion
63 as may be required to comply with the provisions of this my last will and testament—relative to that portion of said will which refers to my funeral expenses.

7th. It is also my request and wish that no monies or legacies shall be paid to any of the legatees of this will during their minority; except as relates to my grand-daughter Florence Marsh,

payment to her shall be left in the discretion of my daughter Christeina Murphy, who shall have authority to make such provision or disposal of the proceeds of my real estate as will enable my said daughter to pay over to my grand-daughter Florence Marsh one-eighth of the proceeds of my real estate upon or after marriage of the said Florence Marsh; the final eighth will be paid her on or about reaching the twenty-third year of her age. As to the legacy which I give and bequeath to my grandson Edward Marsh one-
eighth of the proceeds of my real estate shall be paid to him
64 on or about his twenty-first year, the other eighth to be paid him on or about reaching the twenty-third year of his age.

8th. The payment of all indebtedness against my estate, including medicine nursing, funeral, burial and necessary expences incidental to and connected with the provisions of this my last will and testament, as herein set forth shall be charged to my estate and must be paid in full before any final sale of my real estate shall take place, or any payments made to the legaties herein named; but the details of this provision of my will is not obligatory upon the executrix to whose judgment I leave this specific paragraph (marked 8) of my will entirely to the discretion of my daughter Christeina Murphy.

9th. In the case of the death of either of my grandchildren the surviving grandchild shall inherit and be entitled to the
65 share of the deceased that is to say that my two grandchildren shall be entitled to hold, receive and possess for their own exclusive use and benefit one-half of the proceeds of my real estate as much so to them, as I give and bequeath the other half of my real estate (or the proceeds thereof) to my daughter, Christeina Murphy and further, that is to say, the full enjoyment, exclusive use benefit and disposal of the same in such manner as she may determine; and her signature and seal in the disposal or sale of said property to carry out the provisions of this will shall be binding for myself my heirs or assigns forever.

10th. Having full faith in the honesty and integrity of my beloved daughter, Christeina Murphy, I nominate, constitute and appoint her my sole executrix with full power and authority to sign, seal, sell transfer or dispose of my real estate and act in all matters connected therewith after my death with the same authority
66 as is now possessed by myself; I desire and request that my daughter Christeina Murphy shall on and after the final sale of my real estate, deposit the amounts due to my grandchildren, or either of them, in such manner as may be hereafter determined by the judge of the orphans' court of Washington D. C.

11th. No bonds or security shall be exacted or required from my daughter Christeina Murphy for her faithful execution of the trust I have herewith designated her to perform, and I further authorize and designate my daughter Christeina Murphy to appoint such person as she may name and elect to become the executor or executrix of this my last will and testament, in case she declines to serve in such capacity.

12th. I commend my soul to a merciful God and my blessing and

best wishes for the future welfare of those whom I have named as the legatees of this my last will and testament.

PETER PIPPERT.

67 Signed, sealed, published and declared by the above-named testator as and for his last will and testament in the presence of us, who at his request, in his presence and in the presence of one another, have hereunto set our hands as witnesses on this 7th (seventh) day of April eighteen hundred and eighty-six (1886.)

Witnesses:

HARRIS L. ATCHISON.
ROBERT JOHNSON.
WM. P. WOOD.

Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

MARCH 4TH, 1887.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Harris L. Atchison, Robert Johnson, and Wm. P. Wood, the subscribing witnesses to the foregoing last will and testament of Peter Pippert, late of the District of Colum-
68 bia, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testator therein named sign this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testator and in the presence of one another.

Test: DORSEY CLAGETT,
Register of Wills.

DISTRICT OF COLUMBIA, *To wit:*

I, Dorsey Clagett, register of wills for the District of Columbia, do hereby certify that the foregoing is a true copy of the original will of Peter Pippert, deceased, and the probate thereto, filed and recorded in the office of the register of wills for the District
69 of Columbia aforesaid, and also that the said will, after having been proven by the witnesses whose names appear in the foregoing probate, was, by order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the 4th day of March, A. D. one thousand eight hundred and eighty-seven.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans'
[SEAL.] court business, this 14 day of March, anno Domini 1887.

DORSEY CLAGETT,
Register of Wills for the District of Columbia.

70 *Alias Summons to Answer. Issued Oct.* 22, 1888.

In the Supreme Court of the District of Columbia, October 22, 1888.

CHRISTEINA MURPHY, Complainant,
against
JANE LYNCH *et al.*, Defendant-. } No. 11397, Equity Docket 28.

The President of the United States to Mary Ann Bartlett (P., Oct. 22, Kirby) & Sarah R. Kahl (C., Oct. 22, Kirby), defendants:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[SEAL.] R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS, *Ass't Clerk.*

MEMORANDUM.—That the defendant- herewith served *is* to
71 enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Served both October 22d, 1888.

A. A. WILSON, *Marshal.*

Order Appointing Guard. ad Litem.

Filed Oct. 23, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397, Equity Docket 28.

On motion of the complainant, by her solicitors, Worthington & Heald, and upon its appearing to the court that the defendants Edward Marsh, Florence Marsh, and Samuel E. Murphy,
72 infants under the age of twenty-one years, were duly served with process, and said infants being now personally present in open court, and all of them being over the age of fourteen years, and having selected Job Barnard as their guardian *ad litem* to defend their interests in the above cause, it is this 23rd day of October, 1888, ordered that Job Barnard be, and he hereby is, appointed guardian for said Edward Marsh, Florence Marsh, and Samuel E. Murphy, infant defendants in the above-mentioned cause, to protect their interests in this proceeding.

W. J. COX, *J.*

Answer of Def'ts by Guard. ad Litem.

Filed Oct. 23, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397, Equity Docket 28.

The joint and several answers of Edward Marsh, Florence
73 Marsh, and Samuel E. Murphy, infants under the age of twenty-one years, to the bill of complaint of the above-named plaintiff, by Job Barnard, their guardian *ad litem.*

These defendants can neither admit nor deny any of the matters and things in said bill of complaint contained, and submit their rights and interests in this cause to the care and protection of this honorable court.

EDWARD MARSH,
FLORENCE MARSH,
SAMUEL E. MURPHY,
By JOB BARNARD,
Their Guardian ad Litem.

I, Job Barnard, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, and that the statements therein made as of my own knowledge are true, and those made upon information and belief I believe to be true.

JOB BARNARD.

74 Subscribed and sworn to before me this 23d day of October, 1888.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

Answer of Defendants M. A. Bartlett & S. R. Kahil.

Filed Oct. 24, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
v.
JANE LYNCH *et al.* } No. 11397, Eq. Doc. 28.

Joint and several answer of the defendants Mary Ann Bartlett and Sarah R. Kahl, *with* bill of complaint of the above-named complainant.

For answer to said bill of complaint we say that *that* Wil-
75 liam W. Bean, mentioned in said bill, died on the 16th day of June, 1882, childless and without leaving any will. He left a widow, but she has since died. His parents were dead

at the time of his decease. He left no brothers and but two sisters, and these defendants are those sisters and live in the District of Columbia.

As to the other matters averred in said bill we have no knowledge, information, or belief; and, having fully answered, we pray to be hence dismissed with our reasonabls costs.

MARY ANN BARTLETT.
SARAH REBECCA KAHL.

EDWARDS & BARNARD,
Sol'rs for Def't.

76 *Answer of Def'ts Warner, Emmons, & Jones.*

Filed Oct. 25, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *vs.* JANE LYNCH *et al.* } In Equity. No. 11397, Docket 28.

The joint and several answers of the defendants Brainard H. Warner, George E. Emmons, and John Penn Jones to the bill of complaint in the above-entitled case.

These defendants, answering said bill of complaint or so much thereof as they are advised is necessary and material for them to answer, say as follows:

They admit that they reside in the city of Washington, in the District of Columbia.

On information and belief they admit the truth of the averments contained in the third, fourth, fifth, sixth, and seventh paragraphs of said bill of complaint. Of their own knowledge they state
77 that the averments contained in the eighth paragraph of said bill of complaint are true relating to the deed of trust which is recorded in Liber 1224, at folio 205, of the land records of the District of Columbia, and the indebtedness secured thereby, and the defendant Jones admits that he is willing that all of the u-paid notes referred to in said paragraph and which he now holds shall be taken up and discharged at any time before maturity.

On information and belief these defendants admit the other averments of the eighth paragraph of said bill as to the death of said Peter Pippert and as to the relationship to him of the complainant and of the defendants Edward Marsh and Florence Marsh.

On information and belief these defendants admit the truth of the averments contained in the ninth, tenth, and eleventh paragraphs of said bill.

And having fully answered, these defendants ask that the
78 interest of said Jones as secured by said deed of trust to said Warner and Emmons may be protected by any decree that

may be made herein, and that they may be allowed their reasonable costs.

GEO. E. EMMONS.
BRAINARD H. WARNER.
JNO. PENN JONES.

J. C. HEALD,
Sol'r for Geo. E. Emmons, Brainard Warner, Jno. Penn Jones.

We on oath say that we have read the foregoing answer by us subscribed and know the contents thereof, and that the facts therein stated as of our own knowledge are true and that the facts therein stated upon information and belief we believe to be true.

BRAINARD H. WARNER.
GEO. E. EMMONS.
JNO. PENN JONES.

Subscribed and sworn to before me this 25th day of October, 1888.

S. A. TERRY,
[NOTARY'S SEAL.] *Notary Public.*

79 *Answer of Def'ts Murphy, Paul, & Murphy.*

Filed Oct. 25, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *vs.* JANE LYNCH *et al.* } In Equity. No. 11397, Docket 28.

Answer of the defendants Joseph R. Murphy, Catharine G. Paul, and John W. Murphy.

These defendants admit that they are the children of John Henry Murphy, who is the husband of the complainant in this case; that said John Henry Murphy is their father by a former wife, and that they are the persons of their name to whom Peter Pippert by his will, a copy of which is made a part of the bill of complaint in this case, bequeathed the sum of two hundred dollars each.

These defendants further state that it is true that the complainant, Christeina Murphy, is wholly without means.

Upon information and belief these defendants admit the
80 truth of all the other averments in said bill of complaint, and they desire that she may be granted the relief which she prays, leaving to this honorable court to protect the interest of these defendants as legatees under said will.

JOSEPH R. MURPHY.
CATHARINE G. PAUL.
JOHN W. MURPHY.

A. S. WORTHINGTON,
Solicitor for Defendants Jos. R. Murphy, Cath. G. Paul, John W. Murphy.

Motion to Mortgage or Sell Land Pendente Lite.

Filed Oct. 25, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.*
} In Equity. No. 11397, Docket 28.

The complainant, by her solicitors, Worthington & Heald, moves the court to make provision, pending this suit, for the pay-
81 ment of the taxes, general and special, now assessed and payable against the real estate described in the bill of complaint in this case, or so much of said taxes as may appear to be a proper charge against said real estate, either by directing a sale of a portion of said real estate free and clear of the claims of any of the parties to this suit or by the appointment of a receiver with authority to borrow a sum not exceeding four thousand dollars, and to secure the payment of said loan, with interest not exceeding ten per cent. per annum, by a deed of trust, which shall have priority over the claims of any of the parties to this suit.

WORTHINGTON & HEALD,
Solicitors for Complainant.

Take notice that we shall call up the above motion on Thursday, the 25th day of October, 1888, at the opening of the court or as soon thereafter as counsel can be heard.

WORTHINGTON & HEALD,
Solicitors for Complainant.

82 To Jane Lynch, Willard F. Lynch, Mary A. Bartlett, Sarah R. Kahl, John Penn Jones, Job Barnard, guardian *ad litem;* Jos. R. Murphy, Catharine G. Paul, John W. Murphy.

Service acknowledged Oct. 23, 1888.

JOB BARNARD,
Guardian ad Litem.
EDWARDS & BARNARD,
Solicitors for Mary A. Bartlett and Sarah R. Kahl.
CALDERON CARLISLE,
Sol'r for Jane & Willard F. Lynch.
A. S. WORTHINGTON,
Solicitor for Jos. R. Murphy, Catharine G. Paul, and John W. Murphy.

83 *Order Appointing Jno. C. Heald Rec-iver.*

Filed Oct. 25, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
v.
JANE LYNCH *et al.* } No. 11397, Eq. Doc. 28.

Upon consideration of the motion this day filed by the complainant in this case, the defendants Jane Lynch and Willard F. Lynch appearing by their solicitors and not objecting to this order, and it appearing to the court that the other parties defendant, tho' duly notified, have not appeared to oppose the granting of said motion, it is this 25th day of October, 1888, ordered that John C. Heald be, and he is hereby, appointed a receiver in this case for the purposes hereinafter mentioned, and that said receiver be, and he is hereby, authorized to borrow the sum of not exceeding thirty-five hundred dollars for the purpose of paying all taxes, general and special, due and payable which are a charge
84 against the real estate described in the bill of complaint herein or against any *any* part of said real estate, and to pay said taxes with the money so borrowed; and it is further ordered that said receiver be, and he is hereby, authorized to secure the repayment of said money by giving to the lender his promissory note as receiver, payable in not exceeding one year from date, with interest not exceeding eight per cent. per annum, and by giving a deed of trust (in the form usual in the District of Columbia) upon said real estate or such portion thereof as he shall deem necessary, which deed of trust shall be a lien on the real estate covered by it paramount to the claims or incumbrances of each and all the parties to this suit: Provided, that before this order shall take effect said receiver shall file in this court his bond with entry or entries approved by the court in the sum of five thousand dollars, con-
85 ditioned for the faithful performance of his duties as such receiver.

W. J. COX, *J.*

Receiver's Bond.

Filed Oct. 25, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
v.
JANE LYNCH *et al.* } No. 11397, Eq. Doc. 28.

Know all men by these presents that we, John C. Heald and Robert E. Bradley, are held and firmly bound to the United States of America in the just and full sum of five thousand dollars; to

which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Whereas, by an order of said supreme court made in the above-entitled cause on the 25th day of October, 1888, the above-
86 bounden John C. Heald was appointed receiver to borrow a sum of money not to exceed thirty-five hundred dollars and to secure the payment of the same by his note as such receiver and a deed of trust on the east half of square numbered seven hundred and seventy-nine (779), in the city of Washington, District of Columbia, or so much thereof as he may deem necessary; which said money is to be used in paying the taxes due upon said real estate:

Now, therefore, the condition of this obligation is such that if the said John C. Heald shall faithfully perform his duty as such receiver, then the above obligation to be void; otherwise to remain in full force and virtue in law.

Sealed with our seals and signed by us at Washington, D. C., this 25th day of October, 1888.

JOHN C. HEALD. [SEAL.]
ROBERT E. BRADLY. [SEAL.]

Approved:
W. J. COX, *J.*

87 *Answer of Def't Jane Lynch.*

Filed Jan. 29, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *vs.* JANE LYNCH *et al.* } No. 11397. In Equity.

The answer of Jane Lynch to the bill of complaint of Christeina Murphy against her and others in chancery exhibited.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, and now and at all times hereafter saving to herself all and all manner of benefit or advantage of exception or otherwise that can or may be taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or so much thereof as this defendant is advised it is material or necessary for her to make answer to, answering, saith:

88 1, 2, & 3. This defendant believes the averments of the first, second, and third paragraphs of said bill to be substantially true.

4. Answering the fourth paragraph of said bill, this defendant says that she neither admits nor denies the same, and calls for proof thereof if the same be material.

5. Answering the fifth paragraph of said bill, this defendant says that she has no knowledge of the said proceedings in equity cause No. 4266 in this court and can neither admit nor deny the averments of said paragraph with reference thereto, but must refer to the proceedings themselves for greater accuracy as to their contents, but this defendant says that neither she nor her husband, James Lynch, nor the trustee named in the deed of trust to secure James Lynch were made parties thereto, and that neither of them had any knowledge or notice thereof, and this defendant did not know
89 that any such proceedings had been instituted until about April or May, 1887, nearly twelve years after the said alleged decree in said cause, which said decree, this defendant says upon information and belief, was a consent decree between the said Peter Pippert and Andrew Schwartz, and this defendant says that the said proceedings and decree are wholly inoperative to affect any rights of this defendant even if the court had jurisdiction to pass any decree as against the parties defendant in said cause.

6. Answering the sixth paragraph of said bill, this defendant says that it is true that there is of record a deed of trust as stated in said paragraph, but for certainty with reference to the terms and contents of said paper she can neither admit nor deny the averments of said paragraph, but refers to said deed of trust for the true statement of the same.

90 7. Answering the seventh paragraph of said bill, this defendant says upon information and belief that it is true, as therein stated, that said Bean has died intestate, and that her codefendants, Mary Bartlett and Sarah R. Kahl, are his only heirs-at-law. Defendant admits that James Lynch died intestate, as alleged, on or about the 6th day of December, 1878, and that this defendant and her codefendant, Millard F. Lynch, are the only distributees of his estate. Defendant also says that it is true that she claims to be and in fact she is the sole owner of the said promissory notes in said paragraph and deed of trust referred to, and she is now the holder thereof, and has been ever since the day of their execution thereof.

Further answering said paragraph, this defendant denies that neither the said Elizabeth A. English nor the said Alexander English received any consideration for the said notes, but
91 says that the consideration was the interest of the said James Lynch in other land in the city of Washington, for which said English agreed to give five thousand dollars—one thousand dollars in cash and the balance in four notes, secured on the land of the said Alexander English in the city of Washington—and said English, in pursuance of said agreement, paid said Lynch one thousand dollars in cash and gave the said four promissory notes for one thousand dollars each and the deed of trust to secure the same, and said Lynch took the said notes without any knowledge or notice of any irregularity or defect in the title of his grantor in the deed of trust given to secure the same, and defendant denies that said deed of trust and notes were part of a scheme of Alexander English to defraud the said Pippert, but avers upon information and belief that

the said English acted in entire good faith with said Pippert
92 and paid full value for all his interest in the said property.

Further answering said paragraph, this defendant says upon information and belief that the said Alexander English did have proper and competent authority in law to execute the said deed of trust to said William W. Bean, and that the true facts in relation thereto are as follows:

That prior to 1875 the said Alexander English was a resident of East Saginaw, in the State of Michigan, and was a man possessed of a considerable property and credit; that by reason of numerous accommodation indorsements he became deeply involved and was subjected to numerous suits, the result of which was to deprive him of nearly all of his property; that at that time the said English came to Washington, bringing with him such little means as he had left, and proceeded to make investment in said city; that in order to avoid the seizure of the small remnant of his estate
93 by creditors he made the investments in the name of his wife, Elizabeth A. English, and in the purchase from the said Peter Pippert the consideration was paid by the said Alexander English with his own money and the purchase was actually for his own sole use and benefit, the title being taken in the name of his wife only for the purpose aforementioned, the said Alexander English being the real owner of the land; that the consideration for the said notes given by him to the said James Lynch passed to him direct from the said Lynch and he got the full benefit thereof; that the said Elizabeth A. English paid no consideration for any of the said property and never had any beneficial interest therein, and it was wholly that of her said husband, Alexander English; that he was the real beneficial owner, and in giving the said deed of trust he was pledging his own property, though held in the name of his wife, for a debt due by him and for
94 which he received the consideration. Defendant further says that she is advised and believes, and therefore charges, that while the said deed of trust is not technically sufficient in law to constitute a valid deed of trust, yet that it was on the part of said English a pledge of property of which he was the real an- equitable owner for a just debt which he owed the said James Lynch, and that the said deed of trust constitutes an equitable mortgage upon the said premises which this defendant has the right to have enforced, and that the said Peter Pippert had notice thereof in his lifetime and before the filing of the suit by him hereinbefore referred to; that the complainant herein is not a purchaser thereof, but a mere volunteer, having taken the property as a gift and without paying any value therefor and with full notice of this defendant's claim, and this defendant says that complainant took
95 the land subject to all the equities of this defendant and all other persons whomsoever. Defendant says that the said notes have never been paid, and that it is true that she threatened to enforce the said trust by a sale of said real estate because of the nonpayment thereof.

8. Answering the eighth paragraph of said bill, this defendant

says that she has no knowledge of the matters therein stated and demands strict proof thereof if material to her rights, but she says that the said Warner, Emmons, Rheem, and Pippert all had notice of her equitable lien upon said premises, and whatever rights they may have in the premises are subordinate to those of this defendant.

8½, 9, and 10. Answering paragraphs eight and one-half, nine, and ten of said bill, this defendant says that she has no
96 knowledge of any of the matters and things therein alleged and, if material, demands proof thereof.

11. Answering the eleventh paragraph of said bill, this defendant says that she believes the averments thereof to be substantially true.

Further answering said bill, this defendant says that the fact that the said English had executed said deed of trust and that the same was a lien upon said real estate was well known to said Peter Pippert at the time of the filing of his bill in the cause No. 4266, hereinbefore referred to, or might have been discovered by the exercise of ordinary diligence, and that he had legal notice thereof, but that he took no steps in relation thereto; that his present suit was not instituted until more than fourteen years after the matters and things therein referred to and made the ground of complaint accrued and nearly ten years after the death of the said James Lynch,
97 whereby defendant is deprived of his knowledge, advice, and testimony, and she is advised and believes, and therefore charges, that he and the complainant herein and all persons claiming through him are barred of any relief in respect thereto by their laches, and defendant claims the same benefit of this defense as if she had specially pleaded the same.

Further answering said bill, this defendant says that complainant's devisor, Peter Pippert, at the time of filing the said bill in the equity cause No. 4266, hereinbefore referred to, had full notice of the existence of the lien upon the said real estate in favor of James Lynch for four thousand dollars, and this defendant therefore charges that if the said alleged transaction between said Pippert and the said Schwartz and English in said proceedings referred to was in fact fraudulent and void as between them and him, as therein alleged, yet the said James Lynch
98 was no party to the same and had no notice or knowledge thereof, and therefore the said Pippert was then put to his election whether he would affirm the said transaction and insist upon his vendor's lien upon said land as secured by said deed of trust to said Schwartz and Lackey or rescind the said sale to Schwartz and English and take back the said property, subject to the rights of the said James Lynch under his lien for four thousand dollars; and this defendant further says that the said Pippert did in and by the said proceedings elect to rescind the said sale to Schwartz and English, and that he did elect to disaffirm and to relinquish his vendor's lien upon the said property secured to him by the deed of trust aforesaid, and did elect to resume and did continuously thereafter hold possession of the said land under the

decree in the said proceedings; and this defendant says that
99 she is advised and believes that said Peter Pippert and all persons claiming through him are thereby estopped from now asserting or attempting to set up any vendor's lien as against the lien claimed by this defendant under the trust to secure the said James Lynch, and she claims the same benefit of defense by this estoppel as if she had specially pleaded the same.

And, having fully answered the said bill, she prays to be hence dismissed with her reasonable costs in this behalf sustained.

JANE LYNCH.

CALDERON CARLISLE,
Sol'r for Jane Lynch.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have heard read the answer by me above subscribed and know the contents thereof, and that the
100 matters therein stated as of my personal knowledge are true and those stated upon information and belief I believe to be true.

JANE LYNCH.

Subscribed and sworn to before me this 29th day of January, A. D. 1889.

[NOTARY'S SEAL.] OSCAR LUCKETT,
Notary Public.

Answer of Def't M. F. Lynch.

Filed Feb. 11, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. —. In Equity.

The answer of Millard F. Lynch, one of the defendants herein, to the bill of complaint against him and others in chancery exhibited.

This defendant has no personal knowledge of the several
101 matters and things in the said bill alleged save and *accept* that he admits that the said James Lynch died intestate, leaving this defendant as his only heir-at-law and the defendant Jane Lynch his widow, who with this defendant constitutes all his next of kin, and that the notes for $1,000 each referred to were delivered to the said Jane Lynch, this respondent's mother, by the said James Lynch shortly after he acquired the same, and that they are her property and she has ever since held and owned and now holds and owns the same.

This defendant further says that he has no right or interest in the said notes or the property described in this suit, but that the same are the sole property of the defendant Jane Lynch.

And, having fully answered, he prayes to be hence dismissed with his reasonable costs in this behalf sustained.

MILLARD F. LYNCH.

102 Subscribed and sworn to before me this eighth day of February, A. D. 1889.

ROGER WILLIAMS,
Notary Public.

[NOTARY'S SEAL.]

Replication.

Filed Mar. 18, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.*
} In Equity. No. 11397, Doc. 28.

The complainant joins issue upon the several answers filed by the defendants in this case.

Solicitors for complainants:

WORTHINGTON & HEALD,
Sol'c'rs for Compl't.

103 *Decree for Sale and Appointing Trustee.*

Filed Jul- 8, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.*
} No. 11397, Equity Docket —.

This cause coming on to be heard on the motion of the complainant for an interlocutory decree for sale of the real estate in the proceeding mentioned, with proper provisions for the payment of uncontested liens and for the deposit in court of a sum of money sufficient to meet the only contested lien, and the bill and answers being read and considered by the court, it is, upon consideration thereof, with the consent of all parties to this case, this 8th day of July, 1889, ordered, adjudged, and decreed that John C. Heald be, and he is hereby, appointed trustee, and authorized and directed as such to sell at private or public sale and to convey to the purchaser, free and clear of the claims or liens of each and all
104 the parties to this suit, the real estate described in the third paragraph of the bill of complaint, being the east half of square numbered seven hundred and seventy-nine (779), in the city of Washington, in the District of Columbia: Provided, however, that such sale shall be upon such terms and for such price as will enable the trustee to pay off the amount secured by the deed of trust from Peter Pippert to Brainard H. Warner and George E. Emmons, referred to in the bill of complaint in this case, and the amount secured by the deed of trust given by said James C. Heald as receiver in this case under the order of the court herein to Brainard H. Warner and Augustus S. Worthington to secure the payment of twenty-seven hundred and fifty (2,750) dollars to C. B.

Rheem, and to bring into court immediately upon the completion of such sale the sum of eight thousand (8,000) dollars in cash.

105 And whereas the defendant Jane Lynch claims a lien on the said real estate for the sum of four thousand (4,000) dollars, with interest from August 29th, 1874, at the rate of six per centum per annum, and it is desired by the complainant herein to sell and convey said property free and discharged from said lien, but she is unwilling to admit the validity of said lien;

And whereas the said Jane Lynch, in consideration of the provision hereinafter made, is willing to consent to the decree of sale, now it is further ordered, adjudged, and decreed that said John C. Heald, immediately upon the completion of such sale, shall pay into the registry of this court the sum of eight thousand (8,000) dollars of the proceeds of said sale, and that the same shall be invested and reinvested under the direction of the court and held until the final determination of this cause in the court of last

106 resort, and that said sum of eight thousand (8,000) dollars and the notes, securities, or property in which the same shall from time to time be invested and the increase thereof as to all parties interested in said real estate shall stand in the place and stead of said real estate, and that if in this proceeding it shall ultimately be decided that the defendant Jane Lynch had a valid lien upon said real estate at the time the bill in this case was filed for the sum of four thousand (4,000) dollars, with interest as aforesaid, or only part thereof, then said sum of eight thousand (8,000) dollars and the increase thereof or so much thereof as shall be necessary shall be applied for the satisfaction of such lien.

And it is further ordered that said John C. Heald, simultaneously with the making by him of the sale and conveyance of said

107 real estate, shall pay and satisfy the claim secured by the two deeds of trust above mentioned, and shall obtain and record among the land records of the District of Columbia releases of both of said trusts.

W. J. COX, *J.*

I consent to the passing of this decree.
CALDERON CARLISLE,
Sol'r for Defendant Jane Lynch.

I consent.
JOB BARNARD,
Guardian ad Litem for the Infant Defendants.

We consent.
WORTHINGTON & HEALD,
For Complainants.
A. S. WORTHINGTON,
Solicitor for Def'ts Jos. R. Murphy, Catherine G. Paul, & John W. Murphy.
EDWARDS & BARNARD,
Solicitors for Def'ts Mary A. Bartlett and Sarah R. Kahl.
J. C. HEALD,
Solicitor for Def'ts B. H. Warner, Geo. E. Emmons, & John Penn Jones.

108 *Trustee's Report.*

Filed Jul- 24, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397, Equity Docket —.

Report of John C. Heald, trustee in the above-entitled cause, respectfully shows—

That he was appointed trustee in this cause by decree dated July 8, 1889, to sell the real estate described in the bill of complaint, to wit, lots numbered 1, 2, 3, 13, 14, 15, 16, 17, and 18, in square numbered 779, in Washington city, District of Columbia, and containing 57,316 square feet of ground, at public or private sale. Your trustee has sold said real estate to William Mayse and Theodore F. Sargent for the sum of $20,060.60, the said price being at the rate of 35 cents per square foot, upon the following terms: The sum of $4,000 in cash or so much thereof as may be necessary to re-
109 lease the property from liens, incumbrances, and taxes, and the further sum of $11,000 in cash, and the balance of the purchase-money to be paid in five equal installments, payable respectively on or before 6, 12, 18, 24, and 30 months, to be secured by the promissory notes of the purchasers and a deed of trust on the property sold.

The price at which said land was sold, in the opinion of your trustee, is a fair one, and the terms of sale are such that the provisions of said decree can be complied with by your trustee if said sale be ratified. The equitable owner of said land, Christeina Murphy, has been advised of the above sale and is willing that the same may be ratified at once.

All of which is respectfully submitted.

JOHN C. HEALD.

Subscribed and sworn to before me this 24th day of July, 1889.

R. J. MEIGS, *Clerk*,
By J. JAY CAMP, *Ass't Clerk.*

110 *Order Ratifying Sale.*

Filed Jul- 24, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397, Equity Docket, —.

Upon consideration of the report of John C. Heald, trustee in the above-entitled cause, of the sale of lots numbered 1, 2, 3, 13, 14, 15, 16, 17, and 18, in square numbered 779, in the city of Washington,

in the District of Columbia, it is, this 24th day of July, 1889, ordered that said sale be, and the same is hereby, finally ratified and confirmed; and it is further ordered that said John C. Heald, trustee, be, and he is hereby, authorized to convey said real estate to William Mayse and Theodore F. Sargent, by deed in fee-simple, upon full compliance by them of the terms of sale as reported.

W. M. MONTGOMERY, *Justice.*

We consent to the above order.

111 CALDERON CARLISLE,
Sol'r for Defendant Jane Lynch.
A. S. WORTHINGTON,
Solicitor for Def'ts Jos. P. Murphy, Catherine G. Paul, & John W. Murphy.
WORTHINGTON & HEALD,
Sol'rs for Complainants.
J. C. HEALD,
Sol'r for Def'ts B. H. Warner, George E Emmons, & John Penn Jones.
JOB BARNARD,
Guardian ad Litem for Infant Defendants.
EDWARDS & BARNARD,
Solicitors for Defendants Mary A. Bartlett & Sarah R. Kahl.

112 *Investment of Fund Ordered.*

Filed Sep. 30, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *et al.* *v.* JANE LYNCH *et al.* } No. 11397, Eq. Doc. 28.

The clerk of this court is this 30th day of September, 1889, authorized and directed to invest three thousand dollars of the funds in his hands to the credit of this cause upon the note of Burnett T. Trueworthy, dated September 28, 1889, payable three years after date to the order of John C. Heald, with interest at the rate of six per cent. per annum, payable semi-annually, and secured by first deed of trust on parts of lots No. 16 and 18, in square No. 70, in Washington city, District of Columbia (said parts of lots having a frontage of 35 feet on 21st street N. W. by an average depth of 137 feet 6 inches), to receiver, and hold the said promissory note
113 and security for the benefit and credit of this cause in lieu of the said sum of $3,000.

W. J. COX, *J.*

We consent.
WORTHINGTON & HEALD,
Sol'rs for Compl'ts.
CALDERON CARLISLE,
Sol'r for Jane Lynch, Def't.

Defendant's Testimony.

Filed Nov. 16, 1889. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.*
} In Equity. No. 11397.

Be it remembered that at an examination of witnesses begun and held on the second day of November, A. D. 1889, pursuant to agreement, personally appeared before me, Oscar Luckett, an ex-
114 aminer in chancery of said court, the within-named Andrew Schwartz, Senior, and Jane Lynch, who, being produced as witnesses of lawful age for and on behalf of the defendant Jane Lynch, and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say as follows:

WASHINGTON, D. C., *November* 2, 1889,
SATURDAY, 2.30 o'clock p. m.

Met pursuant to agreement.

Present: William G. Johnson, Esq., solicitor for defendant Jane Lynch; A. S. Worthington, Esq., solicitor for complainant Murphy; also the examiner, Oscar Luckett, and—

ANDREW SCHWARTZ, SR., who, being produced as a witness
115 of lawful age for and on behalf of the defendant Jane Lynch and being first duly sworn, deposes and says:

Direct examination.

By Mr. JOHNSON:

Q. Mr. Schwartz, I wish you would look at these four notes and state in whose handwriting the body of them is and where they were written.

The witness, after examining the notes in question, answers:

A. I think my son wrote these notes in my office.
Q. Where was your office?
A. Between First and Second on Pennsylvania avenue.
Q. Did you know A. English?
A. I knew him very well.
Q. Did you know James Lynch?
A. I did; he was my next-door neighbor, so I ought to have known him.
Q. Were you present when these notes were delivered to Mr. Lynch?
A. I think I was.
Q. Was there anything else given to him besides these notes?

A. Yes, sir; one thousand dollars; I counted it myself.
116 Q. Who furnished the money?
A. Mr. English furnished the money.
Q. What did you do with the money?
A. I turned it over to Mr. Lynch.
Q. How did Mr. Lynch get these notes?
A. They were handed to him.
Q. What did Mr. Lynch give Mr. English for these notes and the $1,000?
A. He gave him a square of ground. I think it was secured by deed of trust on Capitol Hill—on Maryland avenue.
Q. Gave him a note secured on said square of ground?
A. Yes, sir.
Q. Did you ever see that square of ground?
A. I did; walked over it with Mr. Lynch.
Q. Do you know of anybody who has since owned it?
A. Yes, sir.
Q. Who is it?
A. Mr. Luchs, the cigar dealer, on Seventh street.
Q. Do you know what Mr. English did with the note that
117 Mr. Lynch gave him?
A. I think he sold it or gave it to Mr. Tyler.
Q. What Mr. Tyler?
A. The one who kept the real-estate office.

Mr. Worthington, solicitor for complainant, objects to all the witness thinks unless he will state the means of his knowledge on the subject.

Q. How do you know this?
A. He told me so.

Mr. WORTHINGTON: Objected to as incompetent and hearsay.

Q. What relation did you have to this transaction between Lynch and English?
A. Well, there was no relation, only that I got a commission on it from Mr. Lynch. He gave me a note for it.
Q. Is that the note (exhibiting a note to witness)?
A. (After examining it.) Yes; that is the note.

Mr. JOHNSON: I offer in evidence on behalf of the defendant Jane Lynch the notes given by A. English to James Lynch.
118 The same are marked by the examiner for identification Exhibits J. L. Nos. 1, 2, 3, and 4.

The witness resuming: Mr. Lynch wanted just $1,000 even money, you see, and he told me, I will give you two notes for your commission, to be paid when the first note comes due.
Q. You mean the first note given by English to Lynch?
A. Yes, sir.
Q. What was he giving you a commission for?
A. For the transaction of selling this note to English. One of

the notes I kept myself, and one I gave to my son. My son sold his for fifty dollars, and I kept this one ever since.

It is agreed between the counsel present that a copy of the note of James Lynch to witness may be made by the examiner and filed as part of the deposition of witness. Said copy is hereto attached and marked for identification Exhibit J. L. No. 6.

119 Q. Did you have any abstract or notes of title of this square of ground on Capitol Hill on which Mr. Lynch held the note at the time of this transaction?

A. I think I did.

Q. (Exhibiting a paper to witness.) Is that the paper?

A. (After paper is examined by witness.) That is the paper, and I held it and put the note in it and kept it ever since.

Mr. JOHNSON: I offer the said paper in evidence for and on behalf of the defendant Jane Lynch, and the same is herewith filed and marked by the examiner for identification Exhibit J. L. No. 5.

Cross-examination.

By Mr. WORTHINGTON:

Q. Did Mr. Lynch see this abstract when he took those notes?

A. I think he did; he was in the office.

Q. Who was present at that time, Mr. Schwartz?

120 A. Mr. English and Mr. Lynch and my son and myself.

Q. Did you ever see Mrs. English?

A. No, sir. I saw the power of attorney Mrs. English gave Mr. English to transact business for her in the United States and Canada.

Mr. JOHNSON: Objected to as incompetent.

Q. Did Mr. Lynch see that power of attorney?

A. I think he did.

Q. Did he read it?

A. I think he did. Of course, it had a big seal on it, you know. It was a big paper. I had it in the office for some time.

Q. Do you remember whether Mr. Lynch made any objection about Mr. English having a right to convey this property?

Mr. JOHNSON: Objected to as incompetent and not proper cross-examination.

A. I think he did, and I showed him the power of attorney.

Q. You showed Mr. Lynch the power of attorney and he was satisfied with it?

A. Yes, sir.

121 Q. There was nothing said at that time indicating that that was not the property of Mrs. Lynch?

A. I do not recollect anything about it. Mr. Lynch told me it was his.

Q. You do not understand me. I want to know if anything was

said about the property described in the deed of trust securing these notes which are in evidence being the property of Mrs. English.

Mr. JOHNSON: Objected to as incompetent and not proper cross-examination.

A. No; I could not tell.
Q. These notes state that they are secured by deed of trust?
A. Yes, sir.
Q. Was or was there not a deed of trust exhibited there at that time?
A. I think there was.
Q. Have you any recollection on the subject?
A. I have not.
Q. You do not know whether it was there or not?
A. I do not know whether he had the deed of trust in the
122 office or not.
Q. Do you know whether or not Mr. Lynch knew there was a deed of trust?
A. No; I do not.
Q. How did the talk about the power of attorney come up?
A. When Mr. English came to the United States he wanted to do some business here and in Canada for his wife, and he had a power of attorney from her to do business for her in her name.
Q. He had it when he came here?
A. Yes.
Q. When he came here from Canada?
A. He was in Michigan and he came to Washington.
Q. Did he satisfy Mr. Lynch that he had authority under that power of attorney from Mrs. English to make the deed of trust?
A. Yes, sir. Another thing, I think he also went to the city hall and examined the power of attorney there.
123 Q. Then on the faith of the power of attorney Mr. Lynch made the transfer?
A. Yes, sir.
Q. Was anything said why that property was not in Mr. English's name?
A. No, sir.
Q. Did he say how his wife got the property?
A. No; I do not recollect.
Q. Did you act as Mr. Lynch's agent?
A. Mr. Lynch asked me to get somebody to take the note, for he needed money. Mr. English stopped in my house when he came here and said he wanted to invest some money. I told him that I thought I could fix it for him. I thought Mr. Lynch might do it. Mr. Lynch was my next-door neighbor.
Q. Mr. Lynch lived next door?
A. Yes, sir.
Q. Did he deal through you or directly with Mr. English?
A. Through me.
124 Q. Did Mr. English tell you anything about the property referred to in the deed of trust by which these four notes are

secured? I mean anything as to why that property was in his wife's name instead of his own.

A. He said he was doing business for his wife.

Q. Under that power of attorney?

A. Yes, sir; under that power of attorney.

Q. That she had the money and that he was doing business in her name?

A. That she had the money and he was doing the business for her.

Q. Are you quite clear and feel sure as to what you state about this?

A. Yes, sir; he told me often.

Q. Did he not tell you that that was his property?

A. He did not tell. I do not know.

Q. He never said that he bought it in his wife's name?

A. No, sir; he did not.

Q. He always acted as attorney in his wife's name?

A. Yes, sir. He bought some more property here in the same way; just the same. I sold him two or three pieces—the
125 same square that Murphy has.

Mr. JOHNSON: All of this is objected to as not proper cross-examination.

Q. How do you know that Lynch went over to the record office to examine the power of attorney?

A. I think I went with him.

Q. Are you clear about it?

A. I am pretty sure. You see, there was something wrong in the power of attorney. We sent it back to have his wife make it different, and it came again.

Q. Was it the same power of attorney that came back that Lynch had examined?

A. Yes; there was something done to it—a little something required by the District of Columbia. The property was here.

Q. Was it something about the acknowledgment?

A. Something like that.

Q. Was that corrected?

A. That I cannot tell.

Q. It was returned?

126 A. It came again and we went to the city hall.

Q. Do you know it was sent back here?

A. Yes, sir; it came back to our office.

Q. Are you sure about this?

A. I am.

Q. Were you a lawyer?

A. No, sir; I was a real-estate man.

Q. Did you send it back to Michigan to be corrected?

A. I think I did.

Q. And it came back to your office?

A. Yes, sir; it came back to my office.

Q. You did this for Mr. Lynch, and he paid you for it, and when

you were satisfied that the power of attorney was all right he went ahead?

A. Yes, sir.

Q. Did he understand that that was Mrs. English's property he was getting?

A. Yes; he understood that it was from Mrs. English, because it was in her name.

127 Q. Mr. English did not pretend to have any interest in that property except as agent for his wife under that power of attorney, did he?

A. No, sir.

Q. How long did Mr. Lynch live after he got these notes?

A. It was three or four years.

Mr. JOHNSON: Objected to as not proper cross-examination.

Q. Was he alive on the 15th day of July, 1875?

Mr. JOHNSON: I repeat my objection.

A. Yes, sir; I am pretty sure he was. I do not think he died until some three or four years after.

Q. Did you ever ask Mr. Lynch to pay this note, Exhibit J. L. No. 6?

A. I asked Mrs. Lynch.

Q. Why did you not ask Mr. Lynch?

A. Well, I could not tell. I think he said the note was not paid.

Q. Said the note never was paid?

A. Yes, sir; I asked Mr. Lynch to come to my office several
128 times; I sent for him, and when he came I asked him about the note and what chance there was for me to get my money.

Q. Did no one offer to pay these notes?

A. Well, no; it seems to me they never did.

Q. Why did he not enforce the payment of them by sale?

Mr. JOHNSON: Objected to.

A. I do not know.

Q. Did you ever give him any advice on the subject?

Mr. JOHNSON: I repeat my objection.

A. I do not know.

Q. Did he ever ask you for any advice about the matter?

A. No, sir; he never asked me.

Q. Did Mrs. Lynch ever promise to pay the note which her husband gave you?

A. No; she never received the money and she would not pay it; she said she would pay it if she got the money from the note.

Q. Well, then, you understand that if she receives the
129 money from these four notes (Exhibits J. L. Nos. 1, 2, 3, and 4) she will pay you your note?

A. She promised me; she told me she would.

Q. When did she tell you that?

A. Some years ago.

Q. Recently?

A. No, sir; I have not seen her for five or six years.

Q. Her promise is that when she gets the money she will pay you your note?

A. When she gets the money she will pay me my note.

Q. Why did not you enforce the payment of that note?

A. I did not like to enforce the payment of the note, because she was a next-door neighbor.

Q. How long did she live next door to you?

A. About three years.

Q. Were your relations with her and with her husband while alive always friendly?

A. Yes, sir.

130 Mr. JOHNSON: I object to the entire cross-examination of the witness as incompetent and not proper cross-examination.

ANDREW SWARTZ, SR.

Sworn to and subscribed before me this 15th day of November, A. D. 1889.

OSCAR LUCKETT, *Examiner.*

JANE LYNCH, who, being produced as a witness of lawful age for and on behalf of herself (a defendant in this cause) and being first duly sworn, deposes and says:

Direct examination.

By Mr. JOHNSON:

Q. Mrs. Lynch, you are a defendant in this cause and the widow of James Lynch?

A. Yes, sir.

Q. When did your husband die?

A. He has been dead eleven years the sixth of next month.

Q. (Showing Exhibits J. L. Nos. 1, 2, 3, and 4 to witness.)

131 I will ask you to examine these four notes and state if you ever saw them before and when you first saw them.

A. (After examining the notes.) Well, when I first saw these notes there was a thousand dollars in cash paid to me, and it was all in ten-dollar bills—I recollect well—and these notes were given me by my husband.

Q. When was that?

A. It has been a good while. What is the date of the notes?

Mr. JOHNSON: They are dated August 27th, 1874.

The WITNESS: Well, that is the time he gave them to me—that is, my husband gave them to me—and the one thousand dollars in cash.

Q. Where have these notes been since then?

A. They have been at my house.

Q. Who had them?

A. Myself.

Q. Have you ever received any part of the principal or interest money on these notes?

132 A. I have never received one cent—only the one thousand dollars.

Q. What did you do with that one thousand dollars?

A. I used it to pay taxes and to make some improvements, and for different things.

Q. On what property?

A. I do not know.

Q. Whose property?

A. My own property. I paid the taxes on the Avenue lot, but that one was my sister's and not mine.

Q. Did Mr. Lynch tell you where he got these notes and the one thousand dollars?

Mr. WORTHINGTON: This question is objected to on the ground that the evidence is immaterial and irrelevant and hearsay, and also on the ground that the witness is not competent to prove conversations with her husband.

A. Yes, sir; he said he got it from the Maryland Avenue property.

133 Q. Did he say whether or not these notes were secured?

Mr. WORTHINGTON: I repeat my last objection to this question.

A. From a man named Pepper or Peppert or Pippert.

Q. Have you ever transferred the title to these notes to any one else?

A. No, sir.

Q. Are you still the owner of them?

A. Yes, sir.

Mr. WORTHINGTON: Objected to because it does not appear that she ever was the owner of them.

Q. What was the property on Maryland avenue?

A. It was a square of ground. I think it was near Tenth street or somewhere about there. I forget, it has been so long.

Q. Did you have any interest in that property?

A. Yes, sir; it was my father's at one time.

Mr. WORTHINGTON: Objected to as immaterial and irrele-

134 vant, and, further, on the ground that if she had any interest in said property the record is the proper evidence thereof.

Q. Did you claim any interest in it at that time?

A. Why, yes; I claimed interest in it.

Cross-examination.

By Mr. WORTHINGTON:

Q. You lived next door to Mr. Schwartz, Mrs. Lynch?

A. Yes, sir; he lived in Mrs. Merchant's house, but I know very little about him.

Q. Did you know Mr. English, who signed these notes for his wife?

A. No, sir; I signed them for him.

Q. Do you mean that you signed these four notes?

A. No, sir. I never signed them; I thought I might have signed them for my husband.

Q. What notes were you talking about just now when you
135 said that you had signed notes for Mr. English?

A. Well, I did not sign any notes; I did not sign any notes.

Q. What did you mean?

A. Well, I thought I might have signed them for my husband; I never looked over them particularly, and, another thing, when my husband died I did not know about its being given to Mr. Tyler.

Q. Did you know Mr. English?

A. No, sir; I did not.

Q. Ever see him?

A. No; never in my life.

Q. What was your husband's business, Mrs. Lynch?

A. His office was over there (indicating); he was a magistrate; before that he was in the Treasury.

Q. How long had he been a magistrate?

A. Well, I guess about two or three years.

Q. How long before his death was it that he handed you these notes?

A. Some time, I guess, before he died he handed me those.
136 The very moment he brought this money and the notes I said, Mr. Lynch——

Mr. WORTHINGTON: All objected to as conversation with her husband and as incompetent.

Q. My question was, How long before his death did your husband give you these notes?

A. Well, I could not tell exactly.

Q. Do you think it was as much as a year?

A. I guess more; quite a year, anyhow, I think.

Q. Was there ever any administration on his estate? Did anybody take out letters of administration on his estate?

A. No, sir; he did not own anything; he did not own anything, and therefore no letters were taken out. All the property was mine; it came through my father and mother.

Mr. WORTHINGTON: Answer objected to as irresponsive and irrelevant.

Q. Do you know how it was that your husband came to
137 get these notes?

A. No, sir; I do not.

Q. Do you know that your husband gave Mr. Schwartz a note to pay him a commission for the transaction?

A. I did not until he came over there to the office of Mr. James

M. Johnston and said, "Mrs. Lynch, Mr. Lynch owes me a hundred dollars," and I says, "He will never owe you less."

Q. Are you sure that you have never promised to pay Mr. Schwartz this note?

Mr. JOHNSON: Objected to as not proper cross-examination.

A. Yes, sir.

Q. Did you tell him if you got the money from these English notes you would pay him his note?

A. No, sir; I did not.

Q. Are you positive as to this?

A. I am positive of that. I had nothing to do with him or his wife.

Q. Do you mean to say that you were not friendly?

138 A. Oh, no, sir; we were on friendly terms, but I never had anything to do with them.

Q. On friendly terms, but did not associate with them?

A. Yes, sir.

Q. Did you keep this one thousand dollars that you received from your husband in bills in the house?

A. Yes, sir; I kept it there till I spent it all.

Mr. JOHNSON: All of this cross-examination is objected to.

JANE LYNCH.

Sworn to and subscribed before me this 15th day of November, A. D. 1889.

OSCAR LUCKETT, *Examiner.*

139 EXHIBIT O. L. No. 1.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

Be it known that on the thirteenth day of January, in the year eighteen hundred and seventy-six, I, Sidney F. Austin, notary public, duly commissioned and sworn, residing in the District of Columbia, at the request of the German-American Savings Bank of Washington, presented at National Metropolitan bank the original note hereto attached and demanded payment thereof; whereunto I was answered not good.

Therefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, against the drawer and endorser of the said note and all others whom it may or doth concern for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for want of payment thereof, and on the next business day I gave notice of protest to each endorser, viz:

Notice for James Lynch, directed to William Tyler, 715 15th St.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my notarial seal of office the day and year aforesaid.

S. F. AUSTIN,
Notary Public.

Protesting $1 75
Notices 20
Postage .....

$1 95

Recorded in Book B, page 64.

Secured by stated deed of trust.

140

$6,000.00. WASHINGTON, D. C., *Jan. 10th, A. D.* 1873.

Three years after date I promise to pay to the order of James Lynch the sum of six thousand $\frac{00}{100}$ dollars, with interest at six per cent., for value received.

Payable at National Metropolitan bank.

No. —. Jan. 10, 13, '76.

CHAS. A. McEWEN.

141 EXHIBIT J. L. No. 6. Oscar Luckett, Examiner.

WASHINGTON CITY, D. C., *August 29th*, 1874.

On the 15th day of July next I promise to pay to A. Schwartz, Sr., one hundred dollars out of the proceeds of the first note of Elizabeth A. English, which becomes due on that date, with interest.

(Signed) JAS. LYNCH.

I certify that the foregoing depositions (consisting of seventeen typewritten pages) were taken down by me in shorthand, as an examiner in chancery, from the statements when and as uttered by the deponents thereof, and that the same were thereafter read and subscribed by the deponents thereof in my presence.

And I further certify that I am not of counsel nor in anywise interested in this case.

OSCAR LUCKETT,
Examiner in Chancery.

Secured by deed of trust.

142 EXHIBIT J. L. No. 1. Oscar Luckett, Examiner.

$1,000. WASHINGTON, D. C., *August 29th*, 1874.

On the 15th day of July next, after date, I promise to pay to the order of James Lynch or bearer one thousand $\frac{00}{100}$ dollars at the Bank of Washington, value received, with interest, payable semi-annually.

ELIZABETH A. ENGLISH,
By A. ENGLISH, *Her Attorney.*

EXHIBIT J. L. No. 2. Oscar Luckett, Examiner.

Secured by deed of trust.

$1,000. WASHINGTON, D. C., *August 29th*, 1874.

Forty-six months and eighteen days after date I promise to pay to the order of James Lynch or bearer one thousand $\frac{00}{100}$ dollars at the Bank of Washington, value received, with interest, payable semi-annually.

ELIZABETH A. ENGLISH,
By A. ENGLISH, *Her Attorney.*

143 EXHIBIT J. L. No. 3. Oscar Luckett, Examiner.

Secured by deed of trust.

$1,000. WASHINGTON, D. C., *August 29th*, 1874.

Twenty-two months and eighteen days after date I promise to pay to the order of James Lynch or bearer one thousand $\frac{00}{100}$ dollars at the Bank of Washington, value received, with interest, payable semi-annually.

No. —. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH, *Her Attorney.*

EXHIBIT J. L. No. 4. Oscar Luckett, Examiner.

Secured by deed of trust.

$1,000. WASHINGTON, D. C., *August 29th*, 1874.

Thirty-four months and eighteen day after date I promise to pay to the order of James Lynch or bearer one thousand $\frac{00}{100}$ dollars at the Bank of Washington, value received, with interest, payable semi-annually.

No. —. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH, *Her Attorney.*

144 EXHIBIT J. L. No. 5. Oscar Luckett, Examiner.

J. L. No. 5.

Notes of Title.

Square No. 936.

1795, June 22.—Upon a division of lots and squares in the city of Washington made by and between the U. S. commission and the proprietors of the land all of this square remains to George Walker as original proprietor.

George Walker
to
Wm. Prout.

Deed, Oct. 22nd, 1894, conveying all estate under insolvent law, Liber L. No. 11, folio 280.

George Walker
to
Syrus Walker.

Deed, Jan. 9, 1809, conveying all estate under insolvent law, Liber V. 21, folio 140.

There does not appear of record any conveyance from
145 George Walker or from either Wm. Prout or Cyrus Walker as assignees touching the title to the above subsequent to the following tax sale:

1819, Dec. 30th.—All of square 936 sold in the name of George Walker to Moses Young.
1822, Jan. 19th.—Deed to Moses Young, Liber W. B. No. 6, folio 5.
1828, Dec. 30th.—The above tax sale canseled as illegal.

Tax Sale 1.

1837, Jan. 28th.—All of square 936 sold in the name of Moses Young's heirs to George Phillips.
1840, August 7th.—Deed to George Phillips, Liber N. B. 83, folio 212.

George Phillips died intestate in 1842.

Janet B. Phillips, George W. Phillips, Ann Phillips, E. W. Smallwood & wife, and James Lynch and wife
146 to
James B. Phillips.

Deed, No. 21st, 1844, conveying all of square 936, Liber W. B. 114, folio 137.

James B. Phillips
to
Henry May.

Deed of trust, May 30, 1848, conveying all of square 936 and other real estate to secure and indebtedness, with power to sell, Liber W. B. 142, folio 55.

Henry May, trustee,
to
George F. Dyur.

Deed, March 31, 1851, conveying all of square 936, sold under above trust, Liber J. A. S. 121, folio 4 or 3.

George F. Dyer
to
Ed. C. Dyer.

Deed, July 28th, 1855, conveying all of square 936, Liber J. A. S. 121, folio 4 or 6.

147 Neither of the foregoing tax titles were ever conveyed to the present holders of the property, nor do either of them in any way affect the title, the first of them having been cancelled and the second having been derived under an illegal tax sale.

Tax Sale.

1856, May 14th.—All of square 936 sold in the name of James B. Phillips to B. Owens.

1858, Aug. 21.—Deed to Ed. G. Handy, assignee, Liber J. A. S. 165, folio 128.

E. G. Handy's Will.

Feb. 19th, 1865.—Devise all real estate to wife, Isabel T. P. Handy, for life, with power to sell if necessary. Probated July 8, 1871, Will Book 12, folio 132.

Isibel T. P. Hand- }
to }
C. A. McEwen. }

Deed, July 30, 1873, conveying all of square 936, Liber 728, folio 140.

Tax Sale.

1859, May 3d.—All of square 936 sold in the name of Ed. C. Dyer to —— Mitchell.

1862, April 25.—Deed to James Lynet, assignee, Liber J. A. S. 228, folio 164.

Tax Sale.

148 Tax sale.

1867, June 26.—All of square 936 sold in the name of James Lynch to John Hollingshead.

1869, June 30.—Deed to James P. Devlin, assignee, Liber D. No. 11, folio 231.

James P. Devlin }
to }
James Lynch. }

Deed, August 13th, 1869, conveying all square 936, Liber 625, folio 252.

James Lynch and wife }
to }
Chas. A. McEuen. }

Deed, Jan'y 10, 1873, conveying — of square 936, Liber 705, folio 127.

Chas. A. McEuen and wife }
to }
Chas. A. Sherman. }

Deed of trust, Jan'y 10, 1873, conveying all square 936 to secure $600 to James Lynch in 3 years, Liber 706, folio 319.

The title of Charles A. McEuen, as showing in the foregoing notice, is derived through 3 tax titles which appear to be regular. The owner or holders of the original title have not made or urged any claim to this property for over 60 years. I consider the title of Chas. A. McEuen as the best title now to be had for this property. The property is incumbered as stated.

WM. H. WARD.

3d September, 1873.

149 *Extension of Time to Take Testimony.*

Filed May 21, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397, Equity Docket 28.

On motion of the solicitors for the complainant and after hearing counsel for the defendant Jane Lynch thereon, it is this 21st day of May, 1890, ordered that the complainant shall be allowed to and including the 1st day of June, 1890, for taking evidence in support of her bill, and that the defendant Jane Lynch shall be allowed sixty days after the complainant's evidence-in-chief shall have been closed for taking her evidence in defence, and that the complainant shall be allowed fifteen days thereafter for taking her evidence in reply.

W. S. COX, *J.*

150 *Depositions for Complainant.*

Filed June 3, 1890.

In the Supreme Court of the District of Columbia.

Caption.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } In Equity. No. 11397, Doc. 28.

DISTRICT OF COLUMBIA, *ss:*

Be it known that at an examination of one witness, begun and held on the 27th day of May, A. D. 1890, and continued from time to time by adjournment, as within noted, until the 31st day of May, A. D. 1890, when the deposition hereto attached was taken, I, Ernest L. Schmidt, an examiner in chancery, did cause to be personally present at the office of Worthington & Heald, No. 500 Fifth St., in the city of Washington, in said District, Christeina Murphy to testify on the part and behalf of the complainant in a certain cause now pending in the supreme court of the District of Columbia wherein said Christeina Murphy is complainant and
151 Jane Lynch and others are defendants.

DISTRICT OF COLUMBIA, *ss*:

Certificate.

I, Ernest L. Schmidt, an examiner in chancery, do hereby certify that in pursuance of the annexed notice the deposition here attached was taken down by me in shorthand and reduced to typewriting from the oral statements of the witness at the time and place designated in the caption above, and after the same had been reduced to writing and typewriting it was then and there by me read over to the witness and by her subscribed in my presence and in the presence of counsel for the parties respectively within noted who were then and there attending, the witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter at issue in said cause.

152 I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

ERNEST L. SCHMIDT,
Examiner in Chancery.

Ernest L. Schmidt, attorney-at-law, 500 Fifth street N. W.

Notice.

CHRISTEINA MURPHY *vs.* JANE LYNCH *et al.* } Equity. No. 11397.

WASHINGTON, D. C., *May 23rd*, 1890.

Take notice that on Tuesday, May 27th, 1890, at 2 o'clock p. m., at the office of Worthington & Heald, 500 5th St. N. W., I will take depositions on behalf of complainant in the above-entitled cause.

ERNEST L. SCHMIDT, *Examiner.*

To Messrs. Calderon Carlisle and Wm. G. Johnson, solicitors for defendant Lynch *et al.*

153 In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *vs.* JANE LYNCH *et al.* } No. 11397, Equity Doc. 28.

WASHINGTON, D. C., *May* 27, 1890—500 Fifth St., N. W.

Met pursuant to notice to take testimony on behalf of complainant.

Present: Worthington & Heald, for complainant; Wm. G. Johnson, Esq., for defendant Lynch and others; whereupon—

CHRISTEINA MURPHY, a witness of lawful age, produced on behalf of complainant, who, after being duly sworn, testifies as follows:

By Mr. WORTHINGTON:

Q. State your full name.
A. Christeina C. Murphy.

Q. You are the wife of John Henry Murphy, I believe?
154 A. Yes, sir.
Q. How long have you been married to Mr. Murphy?
A. Since the 21st day of October, 1875.
Q. Did you know Peter Pippert?
A. Yes, sir; he was my father.
Q. Is he alive or dead?
A. He is dead.
Q. When did he die?
A. February 21, 1887, in Washington, D. C.
Q. Had he lived here many years?
A. Yes, sir.
Q. Did you live with him up to the time of his death?
A. Yes, sir; he was living with me at my husband's house at the time of his death.
Q. Was your father married at the time of his death?
A. No, sir; he was a widower.
Q. Did he leave any children or descendants of children except yourself?
A. He left me and two grandchildren, Edward Marsh and Florence Marsh, who are parties defendant to this suit.
Q. Did he leave a will?
A. Yes, sir.
155 Q. What was done with that will?
A. That is at the probate court, in this District.
Q. Are you the same Christeina Murphy to whom letters testamentary were issued as executrix under the will of Peter Pippert?
A. Yes, sir.
Q. Did Peter Pippert leave any personal property?
A. No, sir.
Q. Have you any personal knowledge of the transactions between your father and Alexander English and his wife and Andrew Schwartz, referred to in the bill of complaint?
A. None at all.

Complainant's counsel offer in evidence a duly certified copy of a deed purporting to be signed by Peter Pippert and Mary M. Pippert to Elizabeth A. English *et al.*, dated July 27, 1874, and recorded in Liber 759, at folio 49 *et seq.*, of the land records for the District of Columbia, being the deed of which Exhibit C. M. No. 1 to
156 the bill of complaint in this case is a copy. The same is herewith filed and marked "Exhibit C. M. 100" and made part hereof.

Also a paper purporting to be signed by Elizabeth A. English, dated March 23, 1874, annexed to and recorded with the deed of which Exhibit C. M. 100 is a copy, and the same is herewith filed and marked "Exhibit C. M. 101" and made part hereof.

(Objected to by Mr. Johnson.)

Also a duly certified copy of a deed of trust purporting to be signed by Elizabeth A. English, "by A. English, her attorney;" A. Schwartz, Senior, and Mary Ann Schwartz, dated July 27,

1874, and recorded in Liber 759, at folio 68 *et seq.*, of said land records, being the deed of which Exhibit C. M. 2 to the bill of complaint herein is a copy, and the same is herewith filed and marked "Exhibit C. M. 102" and made part hereof.

157 Also a duly certified copy of a deed purporting to be signed by Elizabeth A. English, by "A. English, her attorney," dated August 26, 1874, and recorded in Liber 760, at folio 159 *et seq.*, of said land records, being the deed of which Exhibit C. M. No. 3 to the bill of complaint in this case is a copy, and the same is herewith filed and marked "Exhibit C. M. 103" and made a part hereof.

Also the duly certified copy of the last will and testament of Peter Pippert, which is annexed to the bill of complaint in this case and marked Exhibit C. M. No. 5.

Adjourned to Saturday, May 31, at 2 o'clock p. m.

Met pursuant to adjournment.
Present: The same parties as before.

Mr. Worthington continues the examination of the witness CHRISTEINA MURPHY:

158 Q. When did you first learn of the existence of the deed of trust to Wm. W. Bean, which is described in the sixth paragraph of your bill of complaint in this case?

(Objected to by Mr. Johnson.)

A. About two months before my father's death. My father went to sell the property to Clarence Norment and Mr. Mills, the justice of the peace. They had the title searched, and that is the first my father knew of the deed of trust referred to, and that is also the first I knew of it.

(Objected to by Mr. Johnson.)

Cross-examination by Mr. JOHNSON:

X Q. Did you know James Lynch?
A. No, sir.
X Q. Did you know Alexander English?
A. No, sir.
X Q. Did you know Andrew Schwartz?
A. Yes, sir.
X Q. Did you know that your father had had dealings with Alexander English with regard to this property?

159 A. Only what I learned from my father.

X Q. When was this attempted sale to Messrs. Normant & Mills?

A. In the latter part of December; prior to my father's death. He died in February.

X Q. Had you ever heard your father discuss the title of this property prior to that time?

A. Only that it was good. He gave the folks to understand that it was good.

X Q. What folks?

A. Mr. Norment and Mr. Mills, the parties that wanted to purchase.

X Q. I mean before that time did you ever hear him discuss the subject of the title of the property before that?

A. He always said it was good.

X Q. You don't understand me. Did you ever hear him discuss the subject of the title of this property prior to the attempted sale?

A. No, sir.

160 Redirect examination by Mr. WORTHINGTON:

Q. Did you have a suit brought in this court before the present one, in which Mr. F. W. Jones was your counsel, for the purpose of having the property relieved from this deed of trust in favor of James Lynch?

A. Yes, sir; my father had the suit brought.

Counsel for complainants offer in evidence the papers in the case of Pippert *vs.* English *et al.*, equity, No. 4266, docket — of the supreme court of the District of Columbia.

Counsel for complainants here announce that this testimony closes the direct evidence on behalf of complainant.

Subscribed and sworn to before me this 31st day of May, A. D. 1890.

CHRISTEINA MURPHY.

ERNEST L. SCHMIDT, *Examiner.*

161 COMPL'T'S EXHIBIT C. M. 100. Ernest L. Schmidt, Examiner.

Peter Pippert *et ux.* to Elizabeth A. English *et al.* } Recorded July 28, 1874, 12 m. Deed.

This indenture made this twenty-seventh day of July in the year of our Lord one thousand eight hundred and seventy-four by and between Peter Pippert and Mary M. Pippert his wife of Washington city and District of Columbia of the first part and Elizabeth
162 A. English of East Saginaw, Michigan and Andrew Schwartz of Washington city and District of Columbia parties of the second part.

Witnesseth that the said parties of the first part, for and in consideration of the sum of ten thousand eight hundred and ninety dollars and fourty cents, in lawful money of the United States to them in hand paid by the said parties of the second part at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released and conveyed and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said

parties of the second part their heirs and assigns forever, in the following manner that is to say three-fourths of the hereinconveyed ground and premises to said Elizabeth A.
163 English and one-fourth to the said Andrew Schwartz Sr. the ground conveyed to them in an undivided state or constitution. All of the east half of square No. seven hundred and seventy-nine (779) embracing lots No. one (1) two (2) three (3) thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) of said square as laid down on the plat or plan of said Washington city, D. C. -ontaining fifty-seven thousand three hundred and eighteen square feet be the same more or less (57,318 sqr. ft.). Together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining and all the remainders, reversions, rents, issues, and profits thereof and all the estate, right, title, interest, claim and demand either at law or in equity or otherwise however of the said
164 parties of the first part of, in, to or out of the said described real estate and premises. To have and to hold the said described real estate and premises and appurtenances unto the said parties of the second part their heirs and assigns to their and their sole use, benefit and behoof forever. And the said Peter Pippert and his wife Mary M. Pippert for themselves their heirs executors and administrators do hereby covenant promise and agree to and with the said parties of the second part their heirs and assigns, that they the said parties of the first part and their heirs shall and will warrant and forever defend the said described real estate and premises and appurtenances unto the said parties of the second part their heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof by, from, under or through them or any of them.

165 And further that they the said parties of the first part and their heirs shall and will at any and at all times hereafter upon the requeast and at the cost of the said parties of the second part their heirs or assigns make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said described real estate and premises and appurtenances unto the said parties of the second part their heirs or assigns as the said parties of the second part their heirs or assigns or their counsel learned in the law shall advise, devise or require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

PETER PIPPERT. [SEAL.]

her
MARY x PIPPERT. [SEAL.]
mark.

Signed, sealed and delivered in the presence of—

AMOS HUNT.

166 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, Amos Hunt, a justice of the peace in and for the said District, in said county, do hereby certify that Peter Pippert and Mary M. Pippert, his wife, parties to a certain deed bearing date on the 27th day of July, A. D. 1874, and hereto annexed, personally appeared before me in said District, the said Peter Pippert and Mary M. Pippert, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary M. Pippert, his wife, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and my seal this 29th day of July, A. D. 1874.

AMOS HUNT, *J. P.* [SEAL.]

167 COMPL'T'S EXHIBIT C. M. 101. Ernest L. Schmidt, Examiner.

Know all men by these presents that I, Elizabeth A. English, of East Saginaw, State of Michigan, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Alexander English my true and lawful attorney, for me and in my name, place, and stead to sell any and all real estate, goods, and personal chattels of every kind and description which I now own in the State of Michigan or elsewhere in the United States or the Dominion of Canada, and to buy and sell real estate, merchandise, and personal
168 chattels, and to carry on any kind of business at any place or places in the State of Michigan or elsewhere in the United States or the Dominion of Canada, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all my said attorney or his substitute shall lawfully do or cause to be done by virtue thereof.

In witness whereof I have hereunto set my hand and seal the 23d day of March, one thousand eight hundred and seventy-four.

ELIZABETH A. ENGLISH. [SEAL.]

Sealed and delivered in presence of—
B. M. THOMPSON.
EVA ENGLISH.

169 STATE OF MICHIGAN, } ss:
County of Saginaw, }

Be it known that on this 28th day of March, one thousand eight hundred and seventy-four, before me, a notary public in and for

said county, personally appeared Elizabeth A. English, above named, who is to me known to be the person described in and who executed the above letter of attorney, and acknowledged the same to be her free act and deed.

B. M. THOMPSON,
Notary Public, Saginaw Co., Mich.

Endorsed.

This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 759, fol. 49 *et seq.*, one of the land records of the District of Columbia.

Washington, D. C., May 26, 1890.

GEO. F. SCHAYER,
Dep's Recorder.

170 COMPLAINANT'S EXHIBIT C. M. 102. Ernest L. Schmidt, Examiner.

Liber No. 759, folio 68.

Elizabeth A. English *et al.* to Andrew Schwartz, Jr., *et al.* } Recorded July 31, 1874, 9 a. m. Trust.

This indenture made this twenty-seventh day of July in the year of our Lord one thousand eight hundred and seventy-four between Elizabeth A. English of East Saginaw, Michigan, Andrew Schwartz Sr. and Mary Ann Schwartz his wife of Washington, D. C. parties of the first part and Andrew Schwartz, Jr. and F. E. Lackey trustees of Washington city, D. C. parties of the second part.

Whereas the said Elizabeth A. English and Andrew Schwartz Sr. are justly indebted unto Peter Pippert of Washington city, D. C. in the full sum of ten thousand three hundred and ninety dollars and forty-two cents ($10,390.42) for which amount the said Elizabeth A. English and Andrew Schwartz have given
171 their ten several notes of hand or interest at the rate of 7 per cent. per annum and the interest due and payable semi-annually from and after date, the notes dated July 27, 1874, the nine first notes being for $1,000 each and the last or tenth note being for $1,390.42, the first note falls due and is payable three years from and after date, the next for four years and so on annually thereafter till the whole ten notes are paid, and the interest at seven per cent. is due and payable semi-annually, on the whole amount from date, and the said English and Schwartz, desiring to secure the full payment of said notes execute this indenture.

Now therefore this indenture witnesseth that the said parties of the first part for and in consideration of the premises aforesaid and further the sum of one dollar in lawful money of the United States to them in hand paid by the said parties of the second part
172 at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bar-

gained, sold, aliened, enfeoffed, released and conveyed and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said parties of the second part their heirs and assigns, all the east half of square No. seven hundred and seventy-nine (779) embracing lots thirteen (13) fourteen (14) fifteen (15) sixteen (16) seventeen (17) eighteen (18) one (1) two (2) three (3) of said square as laid down on *in* the plat or plan of Washington city D. C. containing fifty-seven thousand three hundred and eighteen square feet of ground be the same more or less, being the same ground and premises this day conveyed by Peter Pippert and Mary M. Pippert his wife to Elizabeth A. English of East Saginaw, Michigan and Andrew Schwartz Sr. of Washington city, D. C.
(three-fourths of the premises conveyed to said English
173 and one-fourth to said Schwartz) together with all the improvements, ways, easements, rights, priviliges and appurtenances to the same belonging or in anywise appertaining and all the estate, right, title, interest and claim either at law or in equity or otherwise however of the said parties of the first part of, in, to or out of the said described real estate and premises, to have and to hold the said described real estate and premises and appurtenances unto and to the use of the said parties of the second part their heirs and assigns. In and upon the trusts nevertheless hereinafter mentioned and declared that is in trust, to permit the said Elizabeth A. English & Andrew Schwartz Sr. their heirs or assigns to use and occupy the said described premises and the rents, issues and profits
thereof to take have and apply to and for their sole use and
174 benefit until default be made in the payment of said notes of indebtedness, or any proper cost, charge, commission, half commission, or expense in and about the same. And upon the full payment of all of said notes and the interest thereon and all other proper costs, charges, commissions, half commissions or expenses, at any time before the sale hereinafter provided for to release and reconvey the said described premises unto the said English and Schwartz Sr. their heirs or assigns at their cost. And upon this further trust that upon default being made in the payment of the said notes of indebtedness, or any proper cost, charge, commission, half commission, or expense in and about the same, then and at any time thereafter to sell the said described real estate and premises at public auction upon such terms and conditions and at such time
and place and after such previous public advertisement as
175 the said party of the second part, their heirs or the trustee acting in the execution of this trust shall deem advantageous and proper, and to convey the same in fee-simple to and at the cost of the purchaser or purchasers thereof who shall not be required to see to the application of the purchase-money and of the proceeds of said sale or sales first to pay all proper costs, charges and expenses and to retain as compensation a commission of five per cent. on the amount of said sale or sales. Secondly to pay whatever may then remain unpaid of the said notes and the interest thereon whether the same shall be due or not and lastly to pay the remainder if any to said English & Schwartz Sr. executors, administrators or assigns,

and the said English & Schwartz Sr. do hereby agree at their own cost during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to keep the said improve-
176 ments insured against fire in the name and to the satisfaction of said parties of the second part who shall pay whatever may be received therefrom to the payment of the matter thereby secured whether due or not and that upon any default or neglect to so insure any party secured hereby may have said improvements insured and the expense thereof shall be a charge hereby secured and bear like interest as the matter secured.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

ELIZABETH A. ENGLISH,
By A. ENGLISH, *Her Attorney.* [SEAL.]
A. SCHWARTZ, SR. [SEAL.]
MARY ANN SCHWARTZ.

Signed, sealed, and delivered in the presence of--
AMOS HUNT.

177 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, Amos Hunt, a justice of the peace in and for the said District, in said county, do hereby certify that Elizabeth A. English, by A. English, her attorney; Andrew Schwartz, Sr., and Mary Ann Schwartz, his wife, parties to a certain deed bearing date on the 27th day of July, A. D. 1874, and hereto annexed, personally appeared before me in said District, the said Elizabeth A. English, by A. English, her attorney; Andrew Schwartz, Sr., and Mary Ann Schwartz, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary Ann Schwartz, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed,
178 sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and my seal this 27th day of ——, A. D. 1874.

AMOS HUNT, *J. P.* [SEAL.]

Endorsed.

This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 759, fol. 68 *et seq.*, one of the land records of the District of Columbia

Washington, D. C., May 26, 1890.

GEO. F. SCHAYER,
Def's Recorder.

179 COMPLAINANT'S EXHIBIT C. M. 103. Ernest L. Schmidt, Examiner.

Liber 760, folio 159.

Elizabeth A. English to William W. Bean. } Recorded September 1st, 1874, 9 a. m. Trust.

This indenture made this twenty-sixth day of August in the year of our Lord one thousand eight hundred and seventy-four between Elizabeth A. English, of East Saginaw, State of Michigan, party of the first part, Wm. W. Bean, of the city of Washington, and District of Columbia, party of the second part. Whereas the said Elizabeth A. English is justly indebted unto James Lynch in the full sum of four thousand dollars, for which amount, she has this day passed to the said Lynch her four certain promissory notes, bearing even date herewith, and payable as follows: One thousand dollars, on July 15th, 1875, one thousand dollars on July 15th, 1876,
180 one thousand dollars, on July 15th, 1877, and one thousand dollars, July 15th, 1878, with 6 per cent. interest, payable semi-annually, at the Bank of Washington, in the city of Washington, D. C., and the said party of the first part, being desirous to secure the full and prompt payment of said notes, with all interest, costs and expenses that may accrue thereupon, have agreed to execute these presents. Now therefore this indenture witnesseth, that the said party of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar in lawful money of the United States, to her in hand paid by the said part- of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents, grant, bargain, sell, alien, enfeoff, release and convey
181 unto the said party of the second part, his heirs and assigns. All of her right, title, interest, and claim, in and to the following-described pieces and parcels of ground situated and lying in the city of Washington, D. C., and being designated and described upon the map or plan of said city, as follows, that is to say.—Three-fourths of the following-described pieces or parcels of ground, all of the east half of square (No. 779) seveven hundred and seventy-nine, embracing lots No. one (1) two (2) three (3), thirteen (13), fourteen (14), fifteen, (15) sixteen (16) seventeen (17) & eighteen, (18) containing 57,318 square feet of ground. Together, with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in
182 equity or otherwise however of the said party of the first part, of, in, to or out of the said described real estate and premises. To have and to hold the said described real estate and premises, and appurtenances, unto and to the use of the said party

of the second part, his heirs and assigns, in and upon the trusts nevertheless hereinafter mentioned and declared that is in trust to permit the said Elizabeth A. English, her heirs or assigns to use and occupy the said described premises and the rents, issues and profits thereof, to take have and apply, to and for her sole use and benefit, until default be made in the payment of said note, or expense, in and about the same.

And upon the full payment of all of said notes and the interest thereon, and all other proper costs, charges, commissions half
183 commissions and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Elizabeth A. English, her heirs or assigns, at her or their costs. And upon this further trust, that upon default being made in the payment of the said note, or notes, or interest thereon, or any proper cost, charge, commission, half commission or expense in and about the same, then, and at any time thereafter, to sell the said described real estate and premises, at public auction upon such terms and conditions and at such time and place, and after such previous public advertisement as the said party of the second part, his heirs or the trustee acting in the execution of this trust shall deem advantageous and proper, and to convey the same in fee-simple, to and at the cost of the purchaser
184 or purchasers thereof who shall not be required to see to the application of the purchase-money, and of the proceeds of said sale or sales, first to pay all proper costs, charges and expenses and to retain as compensation a commission of 5 per cent. on the amount of the said sale or sales. Secondly, to pay whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any to said Elizabeth A. English, her executors, administrators or assigns, and the said Elizabeth A. English, does hereby agree at her own cost, during all the time, wherein any part of the matter hereby secured shall be unpaid or unsettled, to keep the said improvements insured against fire, in the name and to the satisfaction of said party of the second part who shall pay whatever
185 may be received therefrom, to the payment of the matter hereby secured, whether due or not, and that upon any default or neglect to so insure any party secured hereby may have said improvements insured, and the expense thereof shall be a charge hereby secured and bear like interest as the matter secured.

In testimony whereof, the said party of the first part, has hereunto set her hand and seal on the day and year, first hereinbefore written.

ELIZABETH A. ENGLISH, [SEAL.]
By A. ENGLISH, *Her Attorney.*

Signed, sealed and delivered in the presence of—

AMOS HUNT.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Amos Hunt, a justice of the peace in and for the said District, in said county, do hereby certify that Elizabeth A. English,
186 by A. English, her attorney, party to a certain deed bearing date on the 29th day of August, A. D. 1874, and hereto annexed, personally appeared before me, in said District, the said Elizabeth A. English, by her attorney, A. English, being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and my seal this 31st day of August, A. D. 1874.

AMOS HUNT, *J. P.* [SEAL.]

Endorsed.

This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 760, fol. 159 *et seq.*, one of the land records of the District of Columbia.

Washington, D. C., May 26, 1890.

GEO. F. SCHAYER,
Defs. Recorder.

187 Filed Nov. 17, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *et al.* }
v. } No. 11397, Eq. Doc.
JANE LYNCH *et al.* }

The clerk of this court is this 17th day of November, 1890, authorized and directed to invest three thousand and eight ^{50} dollars ($3,008.50) of the funds in his hands to the credit of this cause upon the note of William W. Wishart, dated May 1, 1883, payable three years after date, to the order of Marian Lewis, with interest at the rate of six per cent. per annum until paid, payable semi-annually, and secured by first deed of trust on parts of lots marked and lettered "A" and "D," in square numbered 726, in Washington city, in said District, and to receive and hold the said promissory note and security for the benefit and credit of this cause in lieu of said sum of $3,008.50. Said deed of trust is recorded in Liber
188 No. 1043, fol. 41 *et seq.*, of the land records for said District.

CHARLES P. JAMES, *J.*

We consent to this order.

CALDERON CARLISLE,
WM. E. JOHNSON,
Sol'ts for Def'ts.
WORTHINGTON & HEALD,
Sol'ts for Compl'ts.

Motion for Extension of Time to Take Testimony.

Filed Nov. 26, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397. In Equity.

Now comes the defendant Jane Lynch, by her counsel, and moves the court to extend the time for taking her testimony to the fifteenth day of January, A. D. 1891, for the reasons set forth in the
189 affidavit hereto attached.

CALDERON CARLISLE,
Sol'r for Jane Lynch.

Messrs. Worthington and Heald, solicitors for complainant:

Please take notice that on Wednesday next, the 26th day of November, 1890, at ten o'clock a. m., or as soon thereafter as counsel can be heard, I shall bring the above motion to the attention of the court.

CALDERON CARLISLE,
Solicitor for Defendant Jane Lynch.

DISTRICT OF COLUMBIA, *ss:*

William G. Johnson, being duly sworn, deposes and says that he is and has been since the institution of this suit associated in the conduct thereof with Calderon Carlisle, counsel for the defendant Jane Lynch, assisting him therein; that he is familiar with
190 the case and knows the testimony required to be taken; that the testimony of one Alexander English is of the highest importance to defendant's case. This affiant has seen the said English and interrogated him as to his knowledge of material and important facts at issue in said cause, and know- that he is able and willing to give testimony in support of the material averments of said defendant's answer; that the defendant has used extraordinary diligence to procure the testimony of the said English, this affiant having, in December, 1888, gone to Michigan in search of said English, and failing to find him there, but learning of his residence in California, in March, 1889, visited said English at Los Gatos, California. Affiant was unable to return to Washington until about the middle of June, 1889, and shortly thereafter was prevented by illness from attending to business until about the first of September, 1889. In September, 1889, affiant wrote S. F. Lieb, an attorney and counsellor at law
191 at San José, California, near the place of residence of said English, requesting him to undertake the taking of the testimony in behalf of said defendant, Lynch. About the latter part of that month Mr. Lieb wrote, informing this affiant of his inability

to attend to the matter, but giving the name of counsel in Los Gatos who could attend to the matter, and this affiant at once telegraphed to the said Lieb to forward affiant's letter and instructions to said counsel at Los Gatos. In October, 1889, said counsel, one Charles F. Wilcox, telegraphed his willingness to attend to the taking of said deposition and stating his fee therefor, and affiant telegraphed him that the same was satisfactory, to see English and prepare himself to take the deposition, and also wrote him full details as to the nature of the case and instructions for his guidance in taking the testimony. On December 27, 1889, affiant having taken certain depositions in behalf——*

192 *Extension of Time to Take Testimony.*

Filed Dec. 2, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397. In Eq.

Upon consideration of the motion of Jane Lynch, and after hearing counsel for complainant and defendants, it is by the court this second day of December, A. D. 1890, ordered that the time for taking the testimony for the defendant Jane Lynch be, and the same is, extended to the first day of the next special term of this court, the said case to remain upon the calendar.

This order is without prejudice to complainant's right to take further testimony after the filing of such testimony should she so desire.

A. C. BRADLEY, *Justice.*

193 *Deposition of Alex. English.*

Filed Jan. 19, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397. In Equity.

It is hereby stipulated and agreed by and between all the parties hereto that the testimony of Alexander English and Elizabeth A. English or either of them may be taken in Los Gatos, California, the respective parties being represented by counsel, before A. Berryman, a notary public in and for Los Gatos, California, or any other

[* There is an omission in the copy at this point, page 192 not connecting with page 191.]

public officer duly authorized to administer oaths in Los Gatos, California.

WORTHINGTON & HEALD,
Solicitors for Complainant.
CALDERON CARLISLE,
Sol'r for Def't Jane Lynch.

194 In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } In Equity. No. 11397.

Be it remembered that on examination of witness begun and held on the 27th day of December, 1890, pursuant to agreement (the stipulation for which is hereunto annexed), personally appeared before me, A. Berryman, a notary public in and for the county of Santa Clara, State of California, at my office, in Los Gatos, in said county, the within-named Alexander English, who, being produced as a witness of lawful age for and on behalf of the defendant Jane Lynch and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say as follows:

195 Present: A. S. Rittredge, solicitor representing the plaintiff; Chas. F. Wilcox, solicitor representing the defendant Jane Lynch; the notary, A. Berryman, and the witness, Alexander English.

Direct examination.

By Mr. WILCOX:

Question. What is your name, age, residence, and occupation?

Answer. Alexander English; seventy-eight years of age; Los Gatos, Cal., and by occupation—none at present.

Q. Do you remember the time when you came to Washington, D. C., about 1874; if so, where did you come from?

A. Yes; I came from Saginaw, Mich.

Q. What was your purpose in coming to Washington?

A. I went East to better my fortunes and eventually drifted into Washington.

Q. How much capital did you take with you to Washington, if any?

A. I don't remember exactly. I did not have much to start with. What my wife had was in notes, and she sent it to me occa-

196 sionally as collected.

Q. Then the capital which you operated with in Washington was sent to you by your wife, was it?

A. Yes; as near as I can recollect.

Q. How did your wife procure this money which she sent you?

A. (Note by the notary:)

The witness refused to answer this question at present, saying that he would consult counsel of his own before answering any questions, and that he, the witness, would again appear before the notary on Saturday, January 3rd, 1891, and not sooner, then and there either to proceed with his testimony or finally and definitely refuse to testify.

Whereupon I, the notary, do now continue this proceeding to Monday, Dec. 29th, 1890, and will continue the same from day to day to Saturday, January 3rd, 1891, aforesaid, neither solicitors present making any objection to my action.

197 Monday, Dec. 29th, 1890, none of the solicitors or witness appearing, the examination was continued to Tuesday, Dec. 30th, 1890.

Tuesday, Dec. 30th, 1890, none of the solicitors or witness appearing, the examination was continued to Wednesday, Dec. 31st, 1890.

Wednesday, Dec. 31st, 1890, none of the solicitors or witness appearing, the examination was continued to Friday, Jan. 2nd, 1891.

Friday, Jan. 2nd, 1891, none of the solicitors or witness appearing, the examination was continued to Saturday, Jan. 3rd, 1891.

Saturday, January 3rd, 1891, none of the solicitors or witness appearing, the examination was continued to Monday, January 5th, 1891.

Monday, January 5th, 1891, neither of the solicitors or witness appearing, the examination was continued to Tuesday, January 6th, 1891.

Tuesday, January 6th, 1891, neither of the solicitors or witness appearing, the examination was continued to Wednesday, Jan. 7th, 1891.

198 Wednesday, January 7th, 1891, both solicitors, A. S. Kittredge, for plaintiff, and Chas. F. Wilcox, for defendant, and witness, Alexander English, being present, the witness refused to testify any further in the matter.

Mr. Wilcox then requested the witness to proceed with his deposition, but the witness positively refused to answer any questions.

I hereby certify the foregoing to be a full and true statement and record of all proceedings had before me in the matter of the deposition of Alexander English in the case first above entitled.

A. BERRYMAN,
[SEAL.] *Notary Public.*

199 *Motion for Further Time to Take Testimony.*

Filed Feb. 3, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } In Equity. No. 11397.

Now comes the defendant Jane Lynch and moves the court further to extend the time for taking testimony of the defendant,

and also moves the court to grant letters rogatory in this cause to the court in Santa Clara county, California, for the purpose of taking the testimony of Alexander English, for the reasons set forth in the annexed affidavit.

CALDERON CARLISLE,
Solicitor for Defendant Jane Lynch.

William G. Johnson, being duly sworn, deposes and says that he is one of the counsel for the defendant Jane Lynch in this cause, and has conducted the correspondence between Mr. Carlisle
200 and Charles F. Wilcox, of Los Gatos, California, the counsel there employed by the defendant Jane Lynch to take the deposition of Alexander English.

That immediately upon the passage of the order passed December 2, 1890, extending the time for taking the defendant's testimony this affiant telegraphed the said Wilcox of the fact of extension of time and urged the immediate taking of the testimony, and on the 3d of December wrote said Wilcox as follows:

"DEC. 3, 1890.

Charles F. Wilcox, Esq., Commercial Bank of Los Gatos, Los Gatos, Cal.

DEAR SIR: After much difficulty I had the time for the taking and returning of the deposition of English and his wife extended on yesterday to January 6, 1891. By the extension we are required to have the depositions filed in court here on or before January 6, and I beg that you will lose no time in the taking of said depositions. When this has been done please be sure to return
201 them by mail under seal, directed to 'R. J. Meigs, clerk supreme court of the District of Columbia, Washington, D. C.' If they are returned in any other way we cannot use the depositions.

You will please excuse my urging this matter, and you will confer a favor on me by return- the depositions before the end of this month, if possible; indeed, considering the distance and importance of the depositions, I beg you will make it a point to have them here this month.

Yours truly, CALDERON CARLISLE."

On the 10th of December said Carlisle received from said Wilcox a letter dated the 5th and sent in response to a letter sent him on the 21st of November, 1890, which letter is as follows, and on January 1, 1891, affiant received from said Wilcox a letter dated December 27, addressed to Mr. Carlisle, which is hereto attached. A certified copy of the said proceedings before the notary is hereto attached.

202 On January 20, 1891, he received a letter from the said Wilcox dated January 12, which is also attached hereto. Affiant further says that until the second of January, 1891, neither the defendant Jane Lynch nor her counsel had any knowledge that said English would refuse or object to testify, but, on the con-

trary, on the ninth of March, 1889, when this affiant conversed with him in Los Gatos, California, he expressed his entire willingness and readiness to testifying at any time when counsel might desire, and even offered to go with this affiant to San Francisco and give his testimony there if this affiant so desired and would pay his expenses to and from that place, but it was impossible for affiant to make such an arrangement at that time, as his stay there was indefinite and it would require at least three weeks to effect arrangements for taking such testimony. As appears by the letters
203 from Mr. Wilcox and the return of the notary who was employed to take the deposition of Mr. English, he has now absolutely refused to testify, and his testimony can therefore only be secured by compulsory process, which can only issue from one of the courts of said State. Affiant further says that said English's refusal to testify is an entire surprise to said defendant's counsel, who had every reason to believe and did believe that he would willingly and freely give the evidence required from him.

Affiant further expects to prove by said English that at the time *of* the transaction involved in this suit took place the said English received from James Lynch, the husband of the defendant Jane Lynch, a promissory note, dated January 10, 1873, at three years after date, for six thousand dollars, signed by Charles A. McEuen and endorsed generally by said James Lynch; that said note,
204 in addition to the personal liability of Charles A. McEuen and James Lynch, was secured by a deed of trust upon all of square 936, in this city; that in consideration of said note the said English gave the four notes of one thousand dollars each and the sum of one thousand dollars cash, which notes are the basis of the claim of the defendant Jane Lynch in this suit; that said English delivered said note to one William Tyler for collection on his, English's, account, but that the said Tyler wrongfully and fraudulently transferred the note to one Leopold Luchs as collateral security.

That in the transaction between said English and Peter Pippert the said English acted in entire good faith with said Pippert and paid him in cash and notes the consideration which he agreed to receive for the said property involved in these proceedings.
205 Affiant further expects to prove by said English that said English had proper and competent authority in law to execute the deed of trust to William W. Bean mentioned in these proceedings; that the money used by said English in the said several tranactions was transmitted *by* him by his wife, who was then in East Saginaw, Michigan, but that said money in fact and law belonged to said English, and that the said title from Peter Pippert to Elizabeth A. English was taken in her name for the purpose of avoiding the creditors of said English, but that the entire transaction was with the me-ns and for the benefit of said Alexander English, and that he was the real owner of the land upon which the said deed of trust in these proceedings involved was given.

Affiant further says that it will be necessary in support of said defendant Jane Lynch's answer herein to take the depositions

here of Andrew Schwartz, Leopold Luchs, and Michael I. Weller, but that said defendant has been unable to avail herself of their testimony because papers necessary to be exhibited to them in the taking of their depositions have been in the possession of the said Wilcox, in California, since he was retained to take the deposition of said English, in the taking of which it was necessary for him to have said papers.

Affiant further says that the testimony of said English is of the utmost material-ty and importance, and that this affiant has used every possible degree of diligence and industry to secure the same, and the delay in getting it has been due to the facts herein set forth and set forth in the affidavit heretofore filed in the former application for the extension of the time for the taking of testimony in this case.

W. G. JOHNSON.

Subscribed and sworn to before me this third day of February, A. D. 1891.

OSCAR LUCKETT,
Notary Public.

Chas. F. Wilcox, attorney and counsellor at law, pres't Commercial Bank of Los Gatos.

LOS GATOS, CAL., *Dec. 5th*, 1890.

Calderon Carlisle, Esq., Fendall law building, Washington, D. C.

DEAR SIR: Your favor of 21st inst. came duly to hand. I am called away to the northern part of Cal. for about ten days, and as soon as I return will arrange with Judge Kittridge, of San José, for the taking of the deposition of English, Judge Kittridge having informed me that he represents the other side of the case here.

Yours resp'y, CHAS. F. WILCOX.

Chas. F. Wilcox, attorney and counsellor at law, pres't Commercial Bank of Los Gatos.

LOS GATOS, CAL., *Dec. 27th*, 1890.

Calderon Carlisle, Esq., Fendall law building, Washington, D. C.

DEAR SIR: Immediately on my return, on Dec. 23rd, I notified Judge Kittredge that I would take Alex. English's deposition today. Meanwhile I saw Mr. English, arranging with him for today. When we had taken down a few questions and answers he flatly refused to testify until he had consulted some attorney as to how far his answers might affect his own liability. Both myself and Judge Kittredge assured him that his testimony had no reference whatever to himself, but only tended to establish the truth as between other litigants; but all our arguments were of no avail; so nothing could be done except to continue the matter from day to day to Saturday, Jan'y 3rd, 1891. I send herewith a certified copy of the proceedings before the notary thus far had, as I pre-

sume it may be needed in securing further time in which to file his deposition.

Judge Kittredge will attend again on Saturday next, and I hope that Mr. English will not make further delay. He had raised the same objections to me in conversation about his expected testimony, but seemed to be perfectly willing to proceed.

Yours resp'y, CHAS. F. WILCOX.

210 P. S.—Mr. English would not consent to proceed before Jan'y 3d, 1891.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *vs.* JANE LYNCH *et al.* } In Equity. No. 11397.

Be it remembered that on examination of witness begun and held on the 27th day of December, 1890, pursuant to agreement (the stipulation for which is hereunto annexed), personally appeared before me, A. Berryman, a notary public in and for the county of Santa Clara, State of California, at my office, in Los Gatos,
211 in said county, the within-named ALEXANDER ENGLISH, who, being produced as a witness of lawful age for and on behalf of the defendant Jane Lynch and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say as follows:

Present: A. S. Kittredge, solicitor representing the plaintiff; Chas. F. Wilcox, solicitor representing the defendant Jane Lynch; the notary, A. Berryman, and the witness, Alexander English.

Direct examination.

By Mr. WILCOX:

Question. What is your name, age, residence, and occupation?

Answer. Alexander English; seventy-eight years of age; Los Gatos, Cal., and occupation, none at present.

Q. Do you remember the time when you came to Washington, D. C., about 1874? If so, where did you come from?

212 A. Yes; I came from Saginaw, Mich.

Q. What was your purpose in coming to Washington?

A. I went East to better my fortunes and eventually drifted into Washington.

Q. How much capital did you take with you to Washington, if any?

A. I don't remember exactly. I did not have much to start with. What my wife had was in notes, and she sent it to me occasionally as collected.

Q. Then, the capital which you operated with in Washington was sent to you by your wife, was it?

A. Yes; as near as I can recollect it.
Q. How did your wife procure this money which she sent you?

(Note by the notary:)

The witness refused to answer this question at present, saying that he would consult counsel of his own before answering any questions, and that he, the witness, would again appear before the notary on Saturday, January 3d, 1891, and not sooner, then
213 and there either to proceed with his testimony or finally and definitely refuse to testify; whereupon I, the notary, do now continue this proceeding to Monday, Dec. 29th, 1890, and will continue the same from day to day to Saturday, January 3rd, 1891, aforesaid, neither solicitor present making any objections to my action.

I hereby certify the foregoing to be a true copy of the deposition of Alexander English and proceedings before me in said matter thus far taken and had.

Witness my hand and official seal December 27th, 1890.

[SEAL.] A. BERRYMAN,
Notary Public.

214 Chas. F. Wilcox, attorney and counsellor at law, pres't Commercial Bank of Los Gatos.

LOS GATOS, CAL., *Jan'y 12th*, 1891.

Calderon Carlisle, Esq., Fendall law building, Washington, D. C.

DEAR SIR: Mr. English has definitely declined to testify in the case of Murphy *vs.* Lynch. He consulted Messrs. Spalsbury & Burke, of Santa Cruz, and they, by letter sent through me, advised him to testify. He promised to attend last Wednesday and give his deposition. On Wednesday, at 11 a. m., the time to which the matter had been continued, he failed to appear. I went to his house and brought him to the notary's office, but could do nothing with him. He claims to believe that in some way the investigation is directed towards him, and I do not believe that he will
215 voluntarily testify. He says that he knows he is out of the jurisdiction of the court.

I therefore return herewith the various papers which you have sent me, notes, mem. of title, deposition of Schwartz, copy of power of att'y, &c., by this registered letter.

If there is anything further that I can do in the matter please command me.

Yours resp'y, CHAS. F. WILCOX.

P. S.—I have forwarded the notary's statement of the proceedings by mail to R. J. Meigs, clerk, &c.

W.

216 *Extension of Time to Take Depositions.*

Filed Feb. 4, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397. In Equity.

Upon consideration of the motion of the defendant Jane Lynch, filed February 3, 1891, for an extension of time for taking the testimony in behalf of said defendant, and after hearing *agreement* thereon, it is by this court, this 4th day of February, 1891, ordered that the time for taking testimony for said defendant be, and the same is hereby, extended to March 17, 1891, and that a commission issue to take the testimony of Alexander English in California.

The complainant is to have a reasonable time after the said defendant shall have closed the taking of depositions under this order to take depositions in reply; such time to be fixed when the defendant's depositions shall have been filed.

A. C. BRADLEY, *Justice.*

217 *Deposition of Alexander English.*

Filed March 23, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, the 11th Day of February, 1891.

CHRISTEINA MURPHY
v.
JANE LYNCH *et al.* } No. 11397, Equity Docket 28.

Commission to Take Depositions.

The President of the United States to A. Berryman, Los Gatos, California, Greeting:

Know you that in confidence of your prudence and fidelity you have been appointed and by these presents you are invested with power and authority to examine Alexander English as a witness for the defendant Jane Lynch in the above-entitled cause upon the interrogatories to be propounded by the counsel for the parties to this cause, and therefore you are hereby commanded, at a certain day and place or certain days and places to be appointed
218 by you, to cause said witness to come before you, and then and there examine him on oath or affirmation upon the said interrogatories and reduce his testimony into writing, to be signed by said witness, and, having so done, annex the same to this writ,

closed up under your seal, and make return thereof into said court with all convenient speed.

Witness E. F. Bingham, chief justice.

[SEAL.] R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

219 In the Supreme Court of the County of Santa Clara, State of California.

In the Matter of the Deposition of ALEXANDER ENGLISH.

The People of the State of California send greeting to Alexander English:

Whereas a commission has been issued out of the supreme court of the District of Columbia, U. S. A., to A. Berryman, notary public, residing at the town of Los Gatos, in this county of Santa Clara, State of California, to examine you under oath as a witness on behalf of the defendant Jane Lynch in a certain action in equity, No. 11397, now pending in the said supreme court of said District of Columbia, wherein Christeina Murphy is plaintiff and Jane Lynch and others are defendants:

Now, therefore, pursuant to the order of this court this day made we hereby command you that, all and singular business and excuses being laid aside, you appear and attend before said A. Berry-
220 man, notary public, at his office, on the north side of Main street, adjoining the premises of the South Pacific Coast Railway Co., in the town of Los Gatos, in this county and State, on Wednesday, the 11th day of March, 1891, at 11 o'clock a. m., then and there to testify in said action pursuant to said commission held by said notary on the part of said Jane Lynch, and disobedience will be punished as a contempt by this court, and you will also forfeit to the party aggrieved the sum of one hundred dollars and all damages which may be sustained by your failure to attend.

Given this 7th day of March, A. D. 1891, at the court-house in the county of Santa Clara, California.

W. G. LORIGAN,

[SEAL.] *Judge of the Superior Court of the County of Santa Clara, California.*

Attest: W. M. ERKSON,
Clerk of said Superior Court.

221 STATE OF CALIFORNIA, } ss:
County of Santa Clara, }

F. Cushing, Jr., being duly sworn, says that he is and at all the times herein mentioned was a white male citizen of the United States over the age of 21 years and not interested in the within action; that he served the within subpœna upon Alexander English, therein named, on the 9th day of March, 1891, at the town of Los Gatos, in said county and State, by then and there showing said

subpœna to said Alexander English, at the same time handing to and leaving with said English a copy thereof; said English did not demand his witness fees.

FRANK CUSHING, JR.

Subscribed & sworn to before me this 9th day of March, 1891.

CHAS. F. WILCOX,
[SEAL.] *Notary Public.*

In the superior court of the county of Santa Clara, California, in the matter of the deposition of Alex. English. Subpœna.

222 *Copies of Notes of English to Lynch.*

$1,000. WASHINGTON, D. C., *August 29th*, 1874.

On the 15th day of July next, after date, I promise to pay to the order of James Lynch or bearer one thousand dollars at the Bank of Washington, value received, with interest, payable semi-annually.

ELIZABETH A. ENGLISH,
By A. ENGLISH, *Her Attorney.*

$1,000. WASHINGTON, D. C., *August 29th*, 1874.

Twenty-two months and eighteen days after date I promise to pay to the order of James Lynch or bearer one thousand dollars at the Bank of Washington, value received, with interest, payable semi-annually.

ELIZABETH A. ENGLISH,
By A. ENGLISH, *Her Attorney.*

223 In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY *vs.* JANE LYNCH *et al.* } No. 11397. In Equity. Docket 28.

It is hereby stipulated and agreed that the deposition of Alexander English under the annexed commission may be taken upon interrogatories to be orally propounded to said witness by the counsel for the respective parties instead of upon written interrogatories to be sent with the commission.

CALDERON CARLISLE,
WM. G. JOHNSON,
For Jane Lynch.

I consent.
A. S. WORTHINGTON,
[SEAL.] *Solicitor for Compl't.*

224 $1,000. WASHINGTON, D. C., *August 29th*, 1874.

Thirty-four months and eighteen days after date I promise to pay to the order of James Lynch or bearer one thousand dollars at the

Bank of Washington, value received, with interest, payable semi-annually.

ELIZABETH A. ENGLISH,
By A. ENGLISH, *Her Attorney.*

$1,000. WASHINGTON, D. C., *August 29th*, 1874.

Forty-six months and eighteen days after date I promise to pay to the order of James Lynch or bearer one thousand $\frac{00}{100}$ — at the Bank of Washington, value received, with interest, payable semi-annually.

No. (4). ELIZABETH A. ENGLISH,
By A. ENGLISH, *Her Attorney.*

225 In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } No. 11397. Equity.

Be it remembered that pursuant to the commission and stipulation hereunto annexed, and subpœna also annexed, on the 11th day of March, A. D. 1891, at the town of Los Gatos, in the county of Santa Clara, State of California, before me, A. Berryman, a notary public in and for said county of Santa Clara and commissioner duly appointed herein, personally appeared ALEXANDER ENGLISH, witness produced on behalf of the defendant Jane Lynch in the above-entitled action, who, being by me first duly sworn, was then and there examined by Chas F. Wilcox, Esq., of counsel for said defendant, and by A. S. Kittredge, Esq., of counsel for the plaintiff, and testified as follows:

226 Mr. WILCOX:

Q. 1. What is your name?
A. Alexander English.
Q. 2. And your age—what is about your age?
A. Seventy-nine the 3rd of February last.
Q. 3. Where do you live?
A. Los Gatos, I suppose.
Q. 4. In this county—Santa Clara?
A. Yes, sir.
Q. 5. Do you remember being in the city of Washington in the month of August, 1874?
A. Yes, sir; I think I was there about that time, as near as I can recollect.
Q. 6. What business were you engaged in in Washington at that time, Mr. English?
A. I wasn't engaged in any particular business; I only happened to stroll there. I had been down to Potomac City, and on my way back home I happened to stay over a few days looking at the sights and scenes in Washington and the improvement made from the

last time I was there, and I had been a resident—a little that way.

227 Q. 7. Did you purchase some land in Washington at that time, Mr. English?

A. Yes; I think I did.

Q. 8. You remember of purchasing a block of land from one Peter Pippert?

A. Yes, sir; I think that is the name—something like that—Pippert or Peppert.

Q. 9. Did you take a deed to the property, do you remember?

A. I don't think I did; I don't remember.

Q. 10. Well, wasn't there a deed taken in your wife's name for it?

A. I don't remember.

Q. 11. Don't remember whether you took a deed or not?

A. No; I do not.

Q. 12. Do you remember of executing a deed of trust upon that property to secure some notes to Lynch—James Lynch?

A. Well, I think I do. I cannot accurately remember, but, then, circumstances would seem to indicate that I did.

Q. 13. Well, now, Mr. English, here are four notes dated the 29th of August, 1874, given to James Lynch or bearer, for $1,000 apiece, and signed by Elizabeth A. English, by A. English, her

228 attorney-in-fact, to mature at different times. Can you say whether those are the notes given by you or not?

A. (Let me see the signatures. Witness here looks at the signatures.) Yes: that is my handwriting.

Mr. WILCOX to Mr. Kittredge: Judge, these notes are marked J. L. No. 1, Oscar Luckett, examiner; J. L. No. 2, Oscar Luckett, examiner; J. L. No. 3, Oscar Luckett, examiner; J. L. No. 4, Oscar Luckett, examiner.

Mr. Wilcox here offers the papers in evidence. Copies are hereto attached.

Q. 14. Well, now, these notes and the deed of trust—these notes were given to James Lynch—do you remember of executing a deed of trust upon the property to secure these notes?

A. I do not.

Q. 15. Don't know whether you did or not?

A. I do not.

Q. 16. Do you remember of executing upon some property—when you bought this lot do you remember of executing a deed of trust to secure Pippert for about $10,000 upon the same property?

A. I don't remember it.

229 Q. 17. And afterwards executing a deed of trust upon some property to secure a Mr. Lynch for those $4,000 notes—do you remember that?

A. I don't remember either of them, but it is very likely it was done from the fact—these notes, I suppose, will read; I didn't read them; I suppose it was so.

Q. 18. What were these four notes given to Lynch for?

A. Well, as near as I can remember, he let me have a deed of trust against a square of ground on Capitol Hill against some man, some Mac.

Q. 19. Go ahead—go on.

A. He let me have a deed of trust.

Q. 20. McEwen?

A. He let me have a deed of trust against him for $6,000—against some ground on Capitol Hill, as near as I can recollect, and for $5,000, paying him $1,000 down, I think, and these four notes, and that was the inducement that they held out for me to let him have the money, was that I was to get it for $1,000 less than what
230 it was worth. That was the inducement that they held out for me to let Lynch have the money, so that I was getting it for $1,000 less than it was worth, because they considered the property well worth the $6,000, and that I could collect it of McEwen, but I didn't want to force the collection of it because they were neighbors, but I found out afterwards I couldn't do it, and I tried several times to have the trust deed collected.

Q. 21. Well, then, they sold you a note secured by a trust deed of $6,000, and in payment for that you gave $1,000 and these four promissory notes?

A. Yes, sir; that is right as near as I can recollect.

Q. 22. Here is a note, Mr. English, dated Washington, D. C., January 10th, 1873: $6,000. Three years after date I promise to pay to the order of James Lynch the sum of $6,000, with interest at 6 per cent., for value received; payable at National Metropolitan bank; signed Charles A. McEwen. Is that the note (here
231 showing) that they sold you at the time?

A. I don't know if that is the note. I let young William Tyler have that for to collect it, if that is the note.

Mr. Wilcox offers the following note in evidence:

"$6,000. WASHINGTON, D. C., *Jan. 10th, A. D.* 1873.

Three years after date I promise to pay to the order of James Lynch the sum of six thousand dollars, with interest at six per cent., for value received; payable at National Metropolitan bank.

CHARLES A. McEWEN.

Metropolitan bank."

Endorsed by Jas. Lynch, Wm. Tyler.

Q. 23. That is the note, I should judge, Mr. English, because it is endorsed on the back Jas. Lynch, without recourse. William Tyler has signed his name across the back.

A. I don't know what right William Tyler had to sign his name; I never gave him any authority, nor my wife, to make any
232 disposition of that note or that deed of trust.

Q. 24. After having thought the thing over now, during this testimony, state whether or not you can recollect the execution of that deed of trust to secure these four $1,000 notes.

A. I cannot remember it; I don't remember it.

Q. 25. But you would not say whether you did do it or not?
A. No; I would not.
Q. 26. If you did execute the deed of trust, did you do it in the name of Elizabeth A. English by yourself as her attorney-in-fact?
A. I certainly did, if I done it at all.
Q. 27. Now, you were acting—or state whether you were acting under the power of attorney which you held from your wife at that time.
A. Yes, sir.
Q. 28. Where was that power of attorney drawn up, Mr. English?
A. East Saginaw, Michigan.
Q. 29. Who did you employ to draw the power of attorney, do you remember?
A. M. B. or B. M. Thompson.
233 Q. 30. Now here is what purports to be a copy of the power of attorney. Do you think that this is a copy of the power of attorney you acted under, or can you tell?
A. I cannot say whether it is or whether it ain't. I know my wife wanted them to give me a regular power of attorney and that I should be fully authorized to act just as she could.
Q. 31. Fully authorized to act for her?
A. Yes, sir.
Q. 32. And in any part of the United States?
A. Yes, sir.
Q. 33. At any time?
A. At any time or any part.
Q. 34. Your idea—the idea of both yourself and wife—was it should be a general power of attorney, so you might act for her in all things. Is that correct?
A. Yes, sir; that is correct, as near as I can recollect.
Q. 35. Well, then, this power of attorney that you acted under, the power of attorney that you acted under in Washington, did you record it, do you remember?
234 A. Yes; it was recorded there.
Q. 36. In Washington?
A. Yes, sir.
Q. 37. Is it or is it not a fact that when you were acting under the power of attorney it was the understanding of both you and your wife that it was to be a general power, authorizing you to perform all acts for her?

Mr. KITTREDGE: We object to that on the ground that the power of attorney must be construed by its own terms.

A. Yes, sir; I think so.

Mr. WILCOX:

Q. 38. This $1,000 you paid to Mr. Lynch—you paid Lynch $1,000 as a part of the consideration when you purchased this $6,000 note from him?
A. Yes, sir.

Q. 39. Was that paid in cash?

A. I think so.

Q. 40. Do you remember whether you paid it in actual money or by check on some bank?

A. I do not.

Q. 41. Did you keep a bank account there, Mr. English?

235 A. I don't recollect. I think I did with one bank up on Fifteenth street; I think I had money deposited there for a while.

Q. 42. Was that in your name or in your wife's name?

A. My wife's name.

Q. 43. State whether or not that money which was in your wife's name, or rather the money you operated in Washington with and used in this transaction, among others, was that sent to you by your wife, or how did it come into your possession?

A. It was sent to me.

Q. 44. By your wife?

A. Yes, sir; as near as I can recollect, that is the way it was.

Q. 45. Do you know how your wife procured this money?

A. Well, I cannot tell exactly how she got it all.

Q. 46. Well, the general sources from which it came?

A. She had notes by which she got money, because I had a good deal, one way or another, and I had real estate, bank stock,

236 boats, and vessels. That was in Saginaw, where we lived.

Q. 47. Well, now, this money your wife sent you, did it come from that property which you had there?

Mr. KITTREDGE: We object to that as leading.

A. Yes, sir; it came from her sources.

Mr. WILCOX: Well, it is leading, but we will put it in another way.

Q. 48. State, then, Mr. English, if you please, the sources from which your wife acquired this money that she sent you.

A. It is too long ago; I cannot tell. I owned vessels, I owned steam vessels, and owned lime works, and sold them and bought and sold to the amount of $100,000 backwards and forwards for ten years, and done quite considerable business and paid a good deal of debts for other folks; but I tried to secure my wife so she would have something to take care of herself, but finally I went down to Washington and fooled it away.

237 Q. 49. Is it not a fact that the money which she sent to you to Washington and with which you operated on these and other transactions there was the proceeds of the property which you had turned over to her?

A. Yes, sir; I calculated that was her divide.

Q. 50. Coming back to the power of attorney under which you acted, state whether, Mr. English, either you or your wife knew that that power of attorney was not a general power of attorney at the time you acted under it.

A. They didn't neither of us know anything about it. We sup-

posed that Mr. Thompson was capable of executing a paper that would be legal and right—I did, and of course my wife did.

Mr. KITTREDGE: I move to strike out the latter clause on the ground that he cannot speak for his wife, Mr. Wilcox.

Q. 51. Mr. English, your wife is an invalid now?
A. Yes; she is stricken with paralysis.
238 Q. 52. Confined to the house all the time?
A. Pretty much; she cannot go out unless she is taken out in the buggy.
Q. 53. So I suppose she is not in a condition to give her testimony by deposition?
A. No, indeed; her mind is more affected than any other part of her.
Q. 54. Has been for four years?
A. I think for about four years.

Cross-examination.

By Mr. KITTREDGE:

Q. 55. You say you were in business at East Saginaw, Michigan?
A. Yes, sir; had been.
Q. 56. And you turned over these notes and property on which you operated in Washington to your wife in East Saginaw?
A. As near as I can recollect, that was the way it was.
Q. 57. Was she living at East Saginaw when you were
239 transacting these affairs in Washington?
A. Yes, sir.
Q. 58. And the money that you operated on was moneys that you received from her for these notes as she collected them—that you had before that time turned over to her in East Saginaw?
A. Yes, sir; I think so, as near as I can recollect.
Q. 59. You say you turned over those notes and properties to her in East Saginaw as her divide. What do you mean by that?
A. I collected them for her use because I had endorsed paper for my friends.
Q. 60. And you intended that those notes and properties should be hers?
A. Yes, sir.
Q. 61. As it was, it was given from you to her?
A. It was her right, because she was worth more than I was when we were married.
Q. 62. When you bought the property in Washington from Pippert, how much money did you pay to Pippert?
A. I think it was about $500.
Q. 63. And that was her money that you paid?
A. Yes, sir.
240 Q. 64. And the balance was not paid to Pippert?
A. No, sir; I guess not.

Q. 65. But notes were executed to Pippert by you under power of attorney from her in her name?

A. Yes, sir; I expect so.

Q. 66. The notes to Pippert were not paid, were they?

A. I guess not; I don't remember now, but I think not.

Q. 67. When you made the transaction with Lynch on behalf of your wife at which these four notes to Lynch were executed, who was present at the time, do you remember?

A. I don't remember who was present, only I know he done the business. I know it was Andrew Schwartz, the real-estate agent I had; he had a real-estate office. It was through him that all my transactions were done—through his persuasion—and I took him to be an honest Dutchman, but I found him to be really a crooked Dutchman before I left there.

241 Q. 68. Whom was he representing in this transaction?

A. He was representing those parties that I dealt with, I suppose.

Q. 69. Was he representing both sides, Lynch and you also?

A. Yes, sir; he seemed to have all the say about the matter. It was through his persuasion that I went into any of these things, and it seems to me as though I was partly insane when I done all this business down at Washington. I had lost my property by these notes pretty much, only what I allowed my wife. I never done business before in that way in my life. I always done a large business, but when I got down there and got led into this miserable ring, that is what came out of it.

Q. 70. Was Lynch present?

A. Lynch was present, of course.

Q. 71. At the time these notes were executed and these transactions made?

A. Yes, sir; to Lynch.

242 Q. 72. At the time this Lynch transaction was made did you say anything to Lynch about his property being yours or you buying it for yourself?

A. I don't think I did, because I was not in the habit of telling what was not so.

Q. 73. It was all done for your wife, as well as in her name?

A. Yes, sir.

Q. 74. Mr. Lynch was dealing with you as agent for your wife?

A. Yes, sir.

Q. 75. Under that power of attorney?

A. Yes, sir.

Q. 76. And Mr. Lynch relied upon that power of attorney for your authority to act for your wife?

A. I expect so; they all seemed to understand it that way.

Mr. WILCOX: I object to that upon the ground that the witness cannot testify to Mr. Lynch's understanding except as evidenced by what he said at the time, and moves to strike out the answer.

Mr. KITTREDGE:

Q. 77. Was the power of attorney—your power of attorney
243 from your wife—shown to them at the time of this transaction with Lynch?

A. I expect so.

Q. 78. It was there?

A. I had it in my possession and had it in my possession until I came here.

Q. 79. It was exhibited to them there, probably?

A. Yes, sir.

Q. 80. Do you remember whether that had been defective—whether there had been a defect in the power in some way, so that it had to be sent back for correction?

A. I don't remember anything about that. I don't remember anything about that.

Q. 81. At the time of your transactions in East Saginaw, I understand you had become embar-assed in your business matters?

A. Yes, sir.

Q. 82. Can you give me now the names of some of your creditors there at that time?

A. Some of them that I had paid money for?

Q. 83. What I want to know is, you say you were embar-assed pecun-arily. Now, pecuniary embar-assments involve the fact of there being creditors that you owed money to. Can you
244 give the names of some of the gentlemen?

A. That I owed money to?

Q. 84. Yes; that you owed money to.

A. I cannot remember the names. I remember the names of men that I paid money for and their notes that I endorsed.

Q. 85. About how much do you now estimate your aggregate indebtedness to have been?

A. In Saginaw?

Q. 86. In Saginaw, both as to what money you owed yourself and what liabilities you were under for others.

A. I didn't owe anything, as I remember, myself.

Q 87. But you were under some liabilities for others?

A. Yes, sir.

Q. 88. Can you give me the names of those parties?

A. Those that I was under liabilities for?

Q. 89. Yes.

A. One is named D. G. Holland; and one that I was indebted most for and involved me the most was Walter Fitzgerald, a brother to my wife.

Q. 90. About how much was that altogether?

A. I paid about $18,000, as near as I can recollect, I think.
245 I think about the same amount was hanging over me until they were outlawed—until the judgments of the circuit court were outlawed.

Q. 91. Was anything said at that time of this transaction with Lynch as to your pecuniary embar-assment?

A. I don't know; I don't remember whether there was or not.

Q. 92. Was anybody there at the time of the transaction with Lynch, except Lynch and Schwartz?

A. I can't say—I cannot tell that; there was a good many people going in and out of the office all the while.

Q. 93. Did you draw the body of the notes that you gave to Lynch in the name of your wife—did you make out the notes or did you sign them?

A. No; those notes were drawn by young Swartz, the son of the old Schwartz. I didn't write them notes, I only signed them, but I am sure that that is his handwriting—that that is young Swartz—he is a good penman.

246 Q. 94. Well, then, young Swartz was there probably at the time of the transaction?

A. I expect so. I think those notes were made by him, because I don't think the old man wrote a hand as nice as that.

Q. 95. The notes were made at the time of the transaction?

A. Of course, as near as I can recollect—supposed to be.

Q. 96. You say you never collected the McEwen note?

A. Of course not.

Q. 97. How did that happen? Why didn't you?

A. Why didn't I? I couldn't collect it. They made me believe I could, but I found the trustee, the wooden man, and the old things would not act; and when I went to him to collect that note he said it was too hard times; says it was no use to try and force a collection on them notes because of the hard times; but I didn't know what to do; I wasn't versed in their style of doing business there at Washington.

247 Q. 98. Did you make any effort to compel him to collect them?

A. No; not that I recollect of. I didn't see as I could do anything.

Q. 99. The note was secured by a trust deed—the note was secured by a trust deed; that $6,000 McEwen note was secured by a trust deed?

A. Yes, sir.

Q. 100. Who had possession of the McEwen $6,000 note?

A. Young Tyler. I left it with him. He was the son of old Dr. Tyler, of Georgetown, one of the most respectable families in that country. I supposed it was perfectly safe for me to leave it with him; and I left the other business there for him to transact and attend to for me, as I was in north Michigan attending to my business there, and I had to leave it in his hands, and he wrote to me a good many letters to get me to sign this note and deed of trust to him, and I never done it.

Q. 101. He never did anything about that?

A. He never done anything about it.

248 Mr. WILCOX: Do you know that of your own knowledge?

A. Hearsay.

Mr. WILCOX: I move to have that stri-ken out.

A. I know, as far as my own knowledge, he wanted me to make an assignment of them.

Mr. KITTREDGE: Which you never did?

A. No, sir.

Q. 102. Did you ever send on to Tyler or request Tyler to turn the note and trust deed over to you, so you could foreclose the trust deed yourself?

A. No; I never did, that I recollect of. The note—the $6,000 McEwen note—and the deed of trust secured on the same belongs to my wife now, just like it always did; she never sold the same nor gave authority to anybody else to sell it.

Q. 103. Do I understand you to say that your wife had money in her own right at East Saginaw?

A. I don't exactly understand how that is. Does it mean as though she had money laid up or capital money on hand?

249 Q. 104. I mean did your wife have money in East Saginaw independent of yourself?

A. No; we never divided it up—we never divided it up really at all, only that I consider that she owned half always of what we had, because I was a widower when we were married and she was a young woman teaching school.

Q. 105. But did she have any money of her own then?

A. Not that I recollect of, but she had property; she got one-fourth of her father's property, which was considered to be worth $6,000, and was, and then I had to deed her my homestead when we were married, because she considered I was an old man, and she was a young woman, comparatively, and I had to deed her that, and when she got that she had a great deal more property than I had; but I always considered she had a right to one-half of all we had, or more.

Q. 106. In your transactions in East Saginaw did you use
250 money of hers?

A. I used the money that came from that property.

Q. 107. And the money that she brought you when you were married?

A. Yes, sir.

Q. 108. So that when you made the transfer of these notes and property to her and with which you operated in Washington that was the remuneration or repayment to her for money of her own that you had used?

A. Yes, of course.

Q. 109. And you consider those notes and properties in East Saginaw, from the collections of which you operated in Washington, as her property?

A. Yes, sir.

Q. 110. Well, when you made this transaction in Washington you acted there for your wife and not for yourself?

A. Yes, sir.

Redirect examination.

Mr. WILCOX:

Q. 111. Mr. English, can you remember whether or not
251 that that piece of property which you purchased from Peter Pippert was half of block number 779, in Washington; is that your recollection?

A. Couldn't tell you anything about it.

Q. 112. Well, the purchase from Pippert was made in the name of Andrew Swartz and your wife jointly?

A. I think it was; yes, sir.

Q. 113. Now, Mr. English, you have said in answer to some questions of Judge Kittredge that you were operating there for your wife exclusively?

A. Yes, sir.

Q. 114. Didn't you have any interest in those transactions?

Mr. KITTREDGE: That is objected to as leading.

Mr. WILCOX:

Q. 115. What interest did you have, if any?

A. I had that interest that I was her authorized attorney to act for her, and, of course, I took an interest in her welfare as my wife.

Q. 116. Were you to have any share of the profits in the transaction?

252 A. There was no share or profits between us, and whether we were to have any share or not, as I remember of.

Q. 117. Did you or your wife have any other means except what you were using there at that time?

A. I guess not.

Q. 118. Well, you were operating for the purpose of making a living for both?

A. Of course, I expected to live with her as long as I lived.

Q. 119. Please state whether or not you were operating in Washington for the purpose of making a living for yourself and wife.

A. Of course, I couldn't do otherwise, because we didn't have any divorce.

Q. 120. When you turned these securities over to your wife, upon which she realized money and sent it to you at Washington, you were insolvent, were you not—that is, you owed more than you could pay?

A. Yes, sir; I was involved. There were executions hang-
253 ing over me for debts—the Fitzgerald debts—that I wasn't able to pay.

Q. 121. You wanted to make some provisions for your wife, did you, or did you not?

A. Of course, I wanted to protect her; I didn't want to fool all her rights away.

Q. 122. Is it or is it not a fact that the property which your wife had at the time of your marriage had some time before this been converted by you and used in your business?

A. Why, all her property that she had I used it in our business, just the same as though I used my own.

Q. 123. That was in Saginaw?

A. Yes, sir; they didn't neither of us have a double interest.

Q. 124. Then you combined it?

A. Combined it and made the most of it. Of course, I was pretty active in business and made money in our business transactions.

The matter is continued by consent of parties until 11
254 o'clock next Saturday, the 14th day of March, 1891.

Saturday, March 14th, 1891, at 11 o'clock a. m., all parties again appear, the testimony is read over to the witness and by him corrected and now by him subscribed.

ALEX. ENGLISH.

Subscribed & sworn to before me March 14th, 1891.

A. BERRYMAN,
Notary Public and Commissioner.

STATE OF CALIFORNIA, } ss:
County of Santa Clara, }

I, A. Berryman, notary public in and for said county, a commissioner specially appointed by the hon. supreme court of the District of Columbia, do hereby certify that the witness named in the foregoing deposition, Alexander English, was by me duly
255 sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was taken at my office, in the town of Los Gatos, county of Santa Clara, State of California, commencing March 11th, A. D. 1891, and ending March 14th, A. D. 1891; that said deposition was, under my direction, by consent of both parties, reduced to writing, and when completed was by me carefully read to said witness, and being by him corrected was by him subscribed in my presence.

In witness whereof I have hereunto set my hand and official seal this 14th day of March, A. D. 1891.

A. BERRYMAN,
Notary Public and Commissioner.

256 *Motion by Complainants to Strike Out Part of Deposition of Alex. English.*

Filed Apr. 14, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY }
v. } No. 11397, Eq. Doc.
JANE LYNCH *et al.* }

Complainant moves the court to strike out and suppress those parts hereinafter specified of the deposition of Alexander English,

filed on behalf of the defendant Jane Lynch in this case, upon the grounds herein below stated:

1. That portion of the answer to the 12th interrogatory which is in the following words: "But, then, circumstances would seem to indicate I did," because the inference of the witness is not competent evidence.

2. All of the answer to the interrogatory number 17, because in that answer the witness gives neither his knowledge nor his recollection, but a mere supposition.

3. The 26th interrogatory and the answer thereto, because the question calls for and the answer gives a mere hypothesis and not a fact.

257 4. Interrogatories 30 to 34, both inclusive, and the answers thereto, because said questions and answers relate to the intention of the wife of said English, and the witness undertakes to testify what that intention was, whereas it was competent for him only to testify to the facts from which such intention might be inferred, it being impossible that the witness could know what his wife's intention was, and it being obvious therefore that he is merely stating his inference from facts which are not disclosed.

5. Interrogatory 37 and the answer thereto, because the "understanding" between the witness and his wife referred to in the interrogatory and answer is too vague and uncertain to entitle the answer to any weight whatever in the case, and because it is immaterial what the understanding between the witness and his wife in this regard was, and because the answer necessarily contains the

258 inference of the witness as to what his wife's intention was, and is therefore objectionable for the reasons stated above in reference to questions 30 to 34 and the answers thereto.

6. The words "Yes, sir; I calculated that was her divide," in the answer to interrogatory 49, because the language quoted is a mere inference of the witness and is clearly incompetent evidence.

7. Interrogatory 50 and the answer thereto, because the answer necessarily states the inference only of the witness as to what his wife's intention was in executing the power of attorney referred to in the question, and is therefore objectionable for the reasons stated above in relation to interrogatories 30 to 34 and the answers thereto, and because it is immaterial whether or not either the witness or his wife knew that the paper in question was not "a general power of attorney," and because the words "general power of attorney" are so vague and uncertain that it is impossible to give any weight to this testimony.

WORTHINGTON & HEALD,
Solicitors for Complainant.

259 Messrs. Calderon C. Carlisle and W. G. Johnson, solicitors for defendant Jane Lynch:

Take notice that we shall call up the above motion on Saturday, April 11, at the opening of the court — as soon thereafter as counsel can be heard.

WORTHINGTON & HEALD,
Solicitors for Compl't.

We consent that above motion may be taken up & disposed of with the hearing on the merits.

WM. G. JOHNSON,
For Jane Lynch.
WORTHINGTON & HEALD,
Solicitors for Compl't.

260 Filed May 6, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.* } In Equity. No. 11397.

Be it remembered that at an examination of witnesses begun and held on the ninth day of February, A. D. 1891, pursuant to agreement, personally appeared before me, Oscar Luckett, an examiner in chancery of said court, the within-names Leopold Luchs, who, being produced as a witness of lawful age for and on behalf of the defendant Jane Lynch, and being first duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say as follows:

261 WASHINGTON, D. C., *February* 9, 1891—2 o'clock p. m.

Met pursuant to agreement.

Present: A. S. Worthington, Esq., solicitor for complainant; William G. Johnson, Esq., solicitor for defendant Jane Lynch; also the examiner.

Whereupon LEOPOLD LUCHS, being produced as a witness of lawful age for and on behalf of the defendant Jane Lynch, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, did testify as follows:

By Mr. JOHNSON:

Q. Mr. Luchs, you knew Mr. Max Luchs, of this city?

A. Yes, sir; he is a brother.

Q. Please look at this note and state whether you and he were ever interested in that note as owners.

—. (The witness after examining note:) Yes, sir; I know all about it.

Q. When did that note first come into your possession, or, rather, through whom?

262 A. It came in my possession through Dodge and Darneille.

Q. Did you buy it outright at that time?

A. No; we lent them fifteen hundred dollars and five hundred dollars afterwards, which were together two thousand dollars.

Mr. WORTHINGTON: This testimony is objected to by counsel for complainant as being immaterial and irrelevant to any issue in this cause.

Q. Did you subsequently become the owners of that note?
A. Yes, sir.

Mr. WORTHINGTON: Objection repeated.

Q. Through what means did you become the owners of it?
A. Well, we had a sale at public auction.
Q. Was that by your own act or other proceedings in court?
A. Through our own act.
Q. Was there any suit afterwards with respect to this note in which you and your brother were interested?

A. Yes, sir; there was a suit afterwards. A what-you-
263 call-it interposed—an injunction, I suppose you call it.

Q. I will ask you, Mr. Luchs, if you remember of a suit of William Tyler against Leopold Luchs, Max Luchs, and Walter Evans?
A. Yes, sir.
Q. With respect to this note?
A. Yes, sir.
Q. Now do you remember that that note was afterwards sold in that suit?
A. Yes; the note was afterwards sold.

Mr. JOHNSON: I also offer in evidence the records and proceedings in the case of William Tyler *vs.* Leopold Luchs and others, No. 4724 of the equity dockets of the supreme court of the District of Columbia, and will pray leave to read the same at the hearing.

Mr. WORTHINGTON: Counsel for the complainant objects, on the grounds above stated, to all the testimony offered by this witness, and he objects to the introduction in evidence of the record and proceedings in the equity suit referred to upon the ground
264 that the same is immaterial and irrelevant, and upon the further ground that the introduction of the Tyler record and proceedings into the record in this case will result in heavy and unnecessary costs, and gives notice that he will ask that whatever may be the result of this suit such costs shall be taxed against the defendant in this case.

Mr. JOHNSON: The defendant Jane Lynch also offers in evidence the report of the trustees in said case, filed February 1, 1879, and the Exhibit A thereto attached; also the order of the court thereon, dated the 21st day of February, 1879.

Mr. WORTHINGTON: Counsel for the complainant objects singly to the introduction in evidence of each of the two papers just referred to on the grounds above stated.

Mr. JOHNSON:

Q. Mr. Luchs, do you remember the property upon which this note was secured?
A. Yes, sir.

Q. Where was it situated?
265 A. Square 936, northeast.
Q. Do you remember where it was located?

A. Between Ninth and Tenth, F and Maryland avenue northeast.

Q. Did you and your brother have that property sold under the deed of trust securing this note?

A. Yes, sir.

Q. Did you acquire a deed to perfect the title to that square after you purchased it?

A. Yes. After we paid many taxes that man, Allen C. Clark—they went and took it away from us because they found some heirs to this property, and we had to buy it—buy off the heirs.

Q. Do you remember what you paid Mr. Clark for that?

A. Well, it cost us in the neighborhood of about eight hundred dollars, expenses and all.

Mr. WORTHINGTON: All this testimony relating to the situation and value of the land and clearing up of the title thereof is objected to as irrelevant and immaterial.

266 Q. Now, Mr. Luchs, did you and your brother subsequently sell this square of ground?

A. Yes, sir.

Q. I will ask you to state now whether when you sold it you realized sufficient from it to pay all of the expenses incident to completing the title and to cover the amount of this note.

Mr. WORTHINGTON: Objected to as irrelevant and immaterial.

The WITNESS: Yes, sir.

Q. Mr. Luchs, did you ever see James Lynch in connection with this note?

A. I only seen him once, but I did not know whether it was James Lynch or not if he had not told me.

Q. Did he ever speak to you of any one in connection with this note other than McEuen, himself, and Tyler?

Mr. WORTHINGTON: This is objected to as irrelevant and immaterial, and also because the witness has already testified that
267 he did not know James Lynch and could not identify him.

The WITNESS: He spoke to me once, and he asked me for my name, and asked me whether I bought a note of Tyler. I said, "Yes." Then he told me something which I understood him at the time that an Englishman got that note from him, but had no right to sell it. That is all I knew about it as regards to Lynch or anybody else.

Q. Did you have any other conversation with James Lynch about that?

A. No; never seen him before or after; that is the only time; he was an old man.

Mr. WORTHINGTON: The question is objected to because it assumes that the person referred to was James Lynch, whereas the witness has testified that he could not identify him.

Mr. Johnson, counsel for defendant Jane Lynch, offers in evi-

dence the note as to which the witness has been testifying,
268 and the same is marked by the examiner for identification Exhibit O. L. No. 1.

Counsel for the complainant consents that the original records and proceedings and the papers specially referred to in the equity case of Tyler *vs.* Luchs *et al.*, No. 4724, equity, may be read in evidence at the hearing instead of the copies without waiving his objection heretofore noted.

Cross-examination.

By Mr. WORTHINGTON:

Q. Did you ever see the person who called on you in reference to this note as to which you have testified except at the time when he called?

A. I never seen him before and not afterwards.

Q. Did you know who he was?

A. No; not personally.

Q. The person, however, you did see said his name was James Lynch?

A. Yes, sir.

Q. That is all you know about it?

A. Yes, sir.

Q. Did he say why English had no right to sell the note?

A. He gave no notes to him, he did not tell me how, and
269 I did not ask him.

Q. Did he use the words in substance that English had no right to sell the note?

A. He said this: that they got it away from him; but I did not ask him why and he did not tell me.

Q. Did this man come to see you, claiming that the note was his and trying to get it?

A. He told me he seen it advertised for sale and he came to see me whether it was mine.

Q. What did you tell him?

A. I told him I did not steal it, if anybody did, and that I bought it.

Q. What did he say?

A. He says he did not blame me, but he said at that time that if the law will give it to him that he is bound to get it; if it was bound to give it to him he was bound to have it.

Q. That he claimed the note if the law would give it to him?

A. Yes, sir.

270 Q. Did he explain in any way how the note got out of his possession?

A. No, sir.

Q. He claimed to own it, did he?

A. Yes; he claimed to own it; I understand him that time that an Englishman got it away from him.

Q. Did you show him the note?

A. No; I did not have it and could not.

Q. It was fully described in the advertisement, was it?
A. Yes, sir.

LEOPOLD LUCHS.

Subscribed and sworn to before me this ninth day of February, A. D. 1891.

OSCAR LUCKETT,
Examiner in Chancery.

Mr. Johnson, counsel for defendant Jane Lynch, offers in evidence certified copies of the following deeds:

Deed from Charles A. McEuen and wife to Charles A. Sherman, recorded in Liber 706, folio 319, dated January 10, 1873.

271 Deed from Edwin P. Goodwin, trustee, to Max Luchs, recorded in Liber 915, folio 50.

Deed from Fannie L. Griffitts and others, heirs-at-law of Joseph S. Lewis, to Miletus J. Wine, recorded in Liber 1017, folio 338.

Deed of Miletus J. Wine to Max Luchs, recorded in Liber 1053, folio 209.

And the record and proceedings in the equity cause of Luchs *vs.* Sherman and Davis, No. 6705 of the equity dockets of this court;

And the deed from Max Luchs and wife to Leopold Luchs, recorded in Liber 1070, folio 103;

And the deed from Max Luchs and Leopold Luchs and their wives to Connell and Cavanaugh, recorded in Liber 1221, folio 354.

Mr. WORTHINGTON: Counsel for complainant to each of the papers offered in evidence separately objects on the ground that it is irrelevant and immaterial, and he makes the like objection to the introduction in evidence of the proceedings in the equity cause referred to.

272 I certify that the foregoing deposition (consisting of seven typewritten pages) was taken down by me in shorthand, as an examiner in chancery, from the statements when and as uttered by the deponent thereof, and that the same was thereafter read and subscribed by the deponent thereof in my presence.

And I further certify that I am not of counsel nor in anywise interested in this cause.

OSCAR LUCKETT,
Examiner in Chancery.

273 In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.*
} No. 11397. In Equity.

It is hereby stipulated and agreed that the following deeds offered in evidence, to wit:

Deed from Charles A. McEuen and wife to Charles A. Sherman, recorded in Liber 706, folio 319, dated January 10, 1873;

Deed from Edwin P. Goodwin, trustee, to Max Luchs, recorded in Liber 915, folio 50;

Deed from Fannie L. Griffitts and others, heirs-at-law of Joseph S. Lewis, to Miletus J. Wine, recorded in Liber 1017, folio 338;

Deed from Miletus J. Wine to Max Luchs, recorded in Liber 1053, folio 209;

Deed from Max Luchs and wife to Leopold Luchs, recorded in Liber 1070, folio 103;

Deed from Max Luchs and Leopold Luchs and their wives
274 to Connell and Cavanaugh, recorded in Liber 1221, folio 354—

may be read at the hearing and certified copies thereof filed in the cause at any time before final decree herein, without waiving, however, the objections to the competency of the same taken at the time the same were offered and noted in the testimony.

CALDERON CARLISLE,
WM. G. JOHNSON,
Sol'r- for Def't Jane Lynch.
WORTHINGTON & HEALD,
Sol'rs for Complainant.

275 *Index to Equity No.* 4266.

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276 *Bill of Complaint.*

Filed April 7, 1875.

(This cause made part of bill in equity 11397.)

In the Supreme Court of the District of Columbia, the 5th Day of April, A. D. 1875.

PETER PIPPERT
versus
ALEXANDER ENGLISH, ELIZABETH A. ENGLISH, Andrew Schwartz, Sr., Mary Ann Schwartz, Andrew Schwartz, Jr., and F. E. Lackey.

In Equity. No. 4266 (4266), Doc. 14.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity:

The plaintiff states as follows: He is — native of the village of Rodenburg, in the former electorate of Hesse Cassel, in the Empire of Germany, but is now a citizen of the United States and a resident of the District of Columbia. He brings this his bill of complaint in his own right.

277 Defendants Alexander English, Elizabeth A. English, his wife; Andrew Schwartz, Senior, and Mary Ann Schwartz, his wife; Andrew Schwartz, Junior, and F. E. Lackey are all citizens of the United States and reside, with the exception of defendants Alexander English and Elizabeth A. English, in the District of Columbia; defendants Alexander and Elizabeth A. English reside in the town of East Saginaw, in the State of Michigan; defendants Alexander English, Elizabeth A. English, Andrew Schwartz, Senior, and Mary Ann Schwartz are sued in their own right, and defendants Andrew Schwartz, Junior, and F. E. Lackey as trustees under a certain deed of trust hereinafter mentioned.

III. On the 27th day of July, A. D. 1874, the plaintiff was seized of and otherwise well entitled to those certain pieces or parcels of land in the city of Washington, in the District of Columbia, distinguished upon the ground plan of said city as lots one (1), two (2), three (3), thirteen (13), fourteen (15), fifteen (15), sixteen (16), seventeen (17), and eighteen (18), in square numbered seven hun-
278 dred and seventy-nine (779), containing in the aggregate about 57,318 square feet of ground.

IV. About the 24th day of July, in the year aforesaid, the plaintiff, being desirous of renting eight frame tenement-houses located on said lots one (1), two (2), and eighteen (18), called upon defendant Andrew Schwartz, Senior, his fellow-countryman (so that the plaintiff might be able to converse about his affairs in his native language, being unable to read or write in the English language or to speak in said language, except with much difficulty), and desired said Schwartz, who is engaged in the real-estate business, &c., at No. — Pennsylvania avenue N. W., in the city of Washington, D. C., to

— charge of and rent for the plaintiff the tenement-houses aforesaid. At this interview said Schwartz asked the plaintiff if he would like to sell the aforesaid lots. Plaintiff replied that he would, if he could obtain his price, 20c. per square foot. To his reply
279 said Schwartz suggested that inasmuch as there was a considerable amount of ground (57,318 square feet) that the plaintiff could well afford to sell at 20c. per square foot, with one-fourth in cash and the balance in three (3) installments, payable in 3, 6, and 9 years after date, deferred payments bearing interest at the rate of 8 per cent., payable semi-annually, secured by deed of trust upon the premises.

In a day or two thereafter said Schwartz — in company with his codefendant, Alexander English, whom said Schwartz represented to plaintiff was a man of means and who was desirous of purchasing said lots. After some considerable conversation at this interview, most of which was between said Schwartz and English, defendant Alexander English remarked to the plaintiff that he thought he would purchase the aforesaid property, and then and there invited the plaintiff to call at the office of said Schwartz aforesaid.
280 This the plaintiff did about the 26th of July aforesaid. When he met said Schwartz and English at this interview English proposes to give the plaintiff 19c. per square foot for his ground, with ¼ cash and the balance in three equal installments, payable in 3, 6, and 9 years, with interest at the rate of seven (7) per cent. per annum. Plaintiff agreed to this proposition, Schwartz representing that it would be a good price for the ground. On the 27th of July aforesaid said Schwartz and said Alexander English and one Amos Hunt (a justice of the peace) called at the plaintiff's house, No. ——, at about the hour of —. At this interview defendant Alexander English said to the plaintiff that he had concluded to purchase (the lots aforesaid) at 19c. per sq. foot, but that he found that he had not as much money as he thought he had, and thereupon proposes to pay the plaintiff $500.00 in cash
281 and the balance in ten (10) equal installments, payable, the first of said installments in three years after date and the remainder annually thereafter. Plaintiff thereupon proposes to go to a lawyer's office and have the necessary papers, &c., drawn. To this said Schwartz and English replied that they had the necessary papers already prepared and with them, as likewise an officer (Amos Hunt aforesaid), before whom they could be acknowledged, and that to go elsewhere would only consume time and create expense, &c. Said English remarked that he was compelled to leave the city aforesaid at the hour of 4 o'clock p. m. for the State of Michigan, and consequently could not delay the matter until the plaintiff should seek the service or advice of an att'y in the premises. Plaintiff then enquires of said Schwartz and English about the provisions of the deed of trust which said defendant, Alexander English, proposed to execute to secure deferred payments,
282 telling them at the same time that he desired some friend of his to be named as trustee. Said Schwartz and English then said that for convenience they had inserted the names of defend-

ants Andrew Schwartz, Junior, and F. E. Lackey as trustees, and suggested that it would be considerable trouble to alter said deed of trust in this respect; that it was in the usual form and contained provisions to the effect following:

(*a.*) The interest upon said deferred payments should be paid semi-annually.

(*b.*) In case default should be made in the payment of said notes or either of them at maturity, or any installment of interest due thereon, the trustee named therein, at the request of the holder of said notes or either of them, *how* proceeds to advertise and sell the property named in the trust, whether the whole of said in-
283 debtedness should be due or not, upon such terms of payment and at such time and place and after such public notice as said trustee should deem advantage-s, and after paying all charges & expenses, including trustee's commissions, to pay what may then remain *my said* of said deferred payments *and* thereon, whether the same be due or not, and lastly to pay what may then remain to the grantor in said deed of trust, his executors, administrators, and assigns.

(*c.*) That the grantor in said deed of trust keep the improvements aforesaid insured against loss of fire in some responsible fire insurance company to the satisfaction of the trustee therein named and his *cestui que trust.*, at his (the grantor's) own expense during the time said deferred payments or any one of them should remain unpaid.

(*d.*) And the grantor in said deed of trust was also to be required to pay all taxes and assessments, both general and special, that should become due or be assessed -gainst said property during
284 the continuance of said trust, and upon any default or neglect on the part of the grantor to insure or pay the taxes and assessments aforesaid any person secured by said trust might have said improvements insured and pay the taxes and assessments, and the expense thereof should be a charge under said trust and should bear a like interest to the matter secured; and the plaintiff avers and offers to maintain and prove as this hon. court may direct that upon the faith of said representations and believing the same to be true he and his wife executed and delivered to defendant Alexander English what the plaintiff at the time believed to be a — to the aforesaid land and premises, whereupon said English delivered to plaintiff what he, plaintiff, then believed to be ten promissory notes drawn by said Alexander English representing said deferred payments and a deed of trust duly executed and acknowledged to secure the payment thereof.

VI. And the plaintiff further avers that the deeds aforesaid
285 were not correctly read over to him, nor did the said Andrew Schwartz, Senior, Alexander English, or said justice of the peace, Amos Hunt, inform him of the true contents thereof; that he executed the deed aforesaid relying entirely upon the representations made by said Schwartz and English in the manner as hereinbefore stated.

VII. Plaintiff has since, to wit, on or about the — day of Feb-

ruary, A. D. 1875, learned that the deed executed by him as aforesaid, instead of conveying the property aforesaid to defendant Alexander English, conveys the same to defendants Elizabeth A. English and his, plaintiff's, *against*, Andrew Schwartz, Senior, as follow-: ¾ to defendant Elizabeth A. English and ¼ to defendant Andrew Schwartz, Senior; that the notes aforesaid, instead of being drawn by said Alexander English, are drawn by Elizabeth A. English & A. English, her att'y, and (said) A. Schwartz,
286 Senior; *in* the *force* of said promissory notes it is expressed that three-fourths of the amount is to be paid by E. A. English and one-fourth by (said) A. Schwartz, Senior; that the paper delivered to plaintiff by said defendant Alexander English, instead of being executed by said defendant, purports to be executed by defendant Elizabeth A. English, by A. English, her att'y, under a letter of att'y purporting to have been executed by said E. A. English at East Saginaw, in the State of Michigan, about the 23rd of March, A. D. 1874.

Said deed of trust is recorded in Liber No. 759, at folio 68 *et seq.*, one of the land records of the District of Columbia, and is asked to be taken and considered as part hereof should the same be considered necessary for the better information of your honors.

Said letter of attorney is also recorded in Liber No. 759, at
287 folio —, and is asked to be taken and considered as part hereof. A true copy is herewith filed, marked Ex. P. P. No. 1.

VIII. At the time the plaintiff delivered the deed aforesaid to said Alexander English there was paid said defendant Andrew Schwartz, Senior, by said English the sum of $500 in cash, from which amount he, the said Schwartz, deducted the sum of $272.46 as his commission (at the rate of 2½ %) on the transaction and hands plaintiff the balance, $227.74, which, with the single exception of $80 in gold paid by said Schwartz, Sr., on account of overdue interest, is every dollar that the plaintiff has thus far realized from the sale of the property aforesaid.

IX. The execution of the pretended deed of trust aforesaid by defendant Alexander English, as attorney for defendant Elizabeth A. English and said defendants Andrew Schwartz, Senior,
288 and wife, was done for the purpose and with the intent of overreaching the plaintiff and in furtherence of a scheme or plan concerted between them (and), the said Andrew Schwartz, Junior, and defendant F. E. Lackey or some one of them for the purpose of unjustly depriving the plaintiff of his property.

X. The declaration made by defendant Alexander English to this plaintiff on said 27th day of July to the effect that he, said English, was obliged to and did fully intend leaving the city of Washington, D. C., at the hour of 4 o'clock in the evening of said day for the State of Michigan was false (as said defendant remained in said city for a- least two weeks thereafter) and was made with the intention of deceiving the plaintiff and with the design of preventing him from taking the counsel of some person learned in the law
289 before he executed the aforesaid deed.

XI. Plaintiff is advised that *that* it was and is a part of the scheme of said defendants Alexander English and Andrew Schwartz, Senior, believing that by the manner in which they have worded said pretended deed of trust that they have delayed the collection of said deferred payments for the period of twelve years, to appropriate to their own use the rents and profits of said premises which shall accrue in the meantime and to avoid the payment of taxes or assessments that may be laid against the same during the period aforesaid.

XII. The defendants Alexander English and Andrew Schwartz, Senior, have not effected any insurance whatever upon the improvements upon said lots one (1), two (2), and eighteen (18), as it was understood in manner aforesaid they should do. They have
290 not paid any taxes, either general or special, laid upon said property since said 27th day of July, nor have they or either of them paid the semi-annual interest, the first installment of which is now overdue, except the $80.00 aforesaid, notwithstanding they have been requested so to do.

XIII. Plaintiff is advised that said defendants Alexander about two weeks after said 27th day of July, A. D. 1874, departed the said city of Washington, D. C., to parts unknown to the plaintiff; that the plaintiff since he was advised that said defendant had departed said city has endeavored in vain to ascertain his whereabouts; said Andrew Schwartz, Junior, about the 3rd day of March, A. D. 1875, declared, as the plaintiff is advised and believes and so charges, that said defendant Alexander English had disposed of his (English's) property (meaning certain property in squares Nos. 729 and
291 675, in Washington city, D. C., and in Beatty & Hawkins' addition to Georgetown, D. C.) at about one half its value and had gone "No one knows where," and that he would never return to this city again.

XIV. Plaintiff further avers that previously to the commencement of this suit and after he had discovered that he had been deceived by the defendants Andrew Schwartz, Senior (his paid agent), Alexander English, and Elizabeth A. English, as hereinbefore more specifically stated, he called upon said Andrew Schwartz, Senior, and requested him to act in a manner that should be considered just and equitable toward the plaintiff and to re-form said pretended deed by the execution of another according to the original intention of the plaintiff and as he understood the same to be when he executed the deed aforesaid.

292 XV. Defendants Andrew Schwartz, Junior, and F. E. Lackey, trustees, decline to execute the provisions of said trust on the ground, as they allege, that said deed of trust cannot be executed until the whole of said deferred payments shall become due.

XVI. The defendant Andrew Schwartz, Sr., has said property advertised and is now offering the same for sale; that plaintiff is informed and believes and so charges that it is a part of the scheme or plan of defendants Andrew Schwartz, Senior, Elizabeth A. English, and Alexander English to effect speedy sale or sales of said

property at prices below its value and have the trustees under said pretended deed of trust, defendants Andrew Schwartz, Junior, and F. E. Lackey, execute releases therefor in disregard of the rights of and without disclosing such action on their part to their
293 *cestui que trust.*, which might, if they are allowed to do —, entail considerable damage to the plaintiff.

Inasmuch as the plaintiff has not a complete and adequate remedy at law, the premises considered, he prays :

1. That defendants may be required to answer the premises.

2. That pending this suit defendants Andrew Schwartz, Senior, and Elizabeth A. English may be restrained and enjoined from selling or encumbering the real estate aforesaid.

3. And that defendants Schwartz & Lackey, trustees, be restrained and enjoined from in any manner interfering with the same.

4. That pending this suit your honors will appoint some suitable person to take — collect the rents of said lots 1, 2, and 18.

5. That upon the final hearing of this cause the deed afore-
294 said from the plaintiff to defendants Elizabeth A. English and Andrew Schwartz, Senior, which is recorded in Liber No. 759, at folio — *et seq. are* of the land records of the District of Columbia, be decreed to be null and void and cancelled of record upon the plaintiff returning to said defendants the money and promissory notes received by him as aforesaid, which he hereby tenders himself ready and willing to do; or if it is considered that this relief cannot be had, then that your honors will decree that said deed of trust recorded in Liber 759, at folio 68 *et seq.*, one of said land records, be re-formed in a manner that shall be considered just and equitable.

And that your honors will grant unto the plaintiff such other and further relief as the nature of the case may require.

That your honors will grant unto the plaintiff the *united*
295 writ of subpœna, to be directed to the defendants, commanding them, &c.

The defendants to this bill are Alexander English, Elizabeth A. English, Andrew Schwartz, Junior, Andrew Schwartz, Senior, Mary Ann Schwartz, and F. E. Lackey.

L. G. HINE, *Sol'r.*

I, Peter Pippert, on oath say that I have heard read the bill by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and that the facts therein stated from information and belief I believe to be true.

PETER PIPPERT.

Subscribed and sworn to before me this 6th day of April, A. D. 1875.

EDWARD B. ROBINSON, [SEAL.]
Justice of the Peace.

296 In the Supreme Court of the District of Columbia, April 7th, 1875.

PETER PIPPERT, Complainant, *against* ALEXANDER ENGLISH *et al.*, Defendants. } No. 4266, Equity Docket 14.

The President of the United States to Alexander English, Elizabeth A. English, Andrew Schwartz, Sr., and Mary Ann Schwartz, his wife; Andrew Schwartz, Jr., & F. E. Lackay, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Carter, chief justice.

R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS,
Ass't Clerk.

297 *Restraining Order.*

An original bill praying an injunction to restrain def'ts from selling or in any manner interfering with the property mentioned in said bill is this day filed. Hearing is fixed for the 17th April, 1875, at 11 o'clock a. m. Until further order you are hereby restrained as prayed.

By order of the court:

A. WYLIE, *Justice, &c.*

Attest:
R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS,
Ass't Clerk, &c.

Marshal's Return.

Not to be found, Alex. English & Eliz'b'th A. English.
Sum'nd & served notice for injunction on Andrew Schwartz, Sr., Andrew Schwartz, Jr., & F. E. Lackay April 8th, '75.

ALEX'D. SHARP, *Marshal.*

HINE.
S'd Ap'l 8, K., 1–75.
EDWARDS.

298 *Appearance of Def'ts A. Schwartz, Sr., A. Sch-artz, Jr., Mary A. Schwartz, & F. E. Lackey, May* 11, 1895.

PIPPERT *vs.* ENGLISH. } 4266. Eq.

Enter my appearance for the defendants Andrew Schwartz, Sr., Andrew Schwartz, Jr., Mary Ann Schwartz, and F. E. Lackey.

BAINBRIDGE H. WEBB.

Appearance entered as per order.

By the COURT.

May 11, 1875.

299 *Appearance of Absent Def'ts Ordered.*

Filed May 13, 1875. R. J. Meigs.

In the Supreme Court of the District of Columbia, the 13th Day of May, 1875.

PETER PIPPERT
v.
ALEXANDER ENGLISH *et al.* } No. 4266, Equity Docket 14.

On motion of the plaintiff, by Mr. L. G. Hine, his solicitor, it is ordered that the defendants Alexander English and Elizabeth A. English cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court:

A. WYLIE, *Justice, &c.*

300 *Decree Appointing Rugby Marsh, Receiver.*

Filed May 13th, 1875. R. J. Meigs.

In the Supreme Court of the District of Columbia.

PETER PIPPERT
versus
ALEXANDER ENGLISH *et al.* }

This cause came on to be heard at this term upon motion of counsel for complainant for the appointment of a receiver. It is, therefore, this 14th day of May, A. D. 1875, by consent of counsel for defendants Andrew Schwartz, Sr., Andrew Schwartz, Jr., and Mary Schwartz, ordered that Rugby Marsh, of the city of Washington, in the District of Columbia, be, and he is hereby, appointed receiver, with power and authority to get in, collect, and receive the rents and profits of the real estate and premises mentioned and described in the bill which are now due and in arrears or which may hereafter become due, with full power to institute all
suits for the collection of the rents of said premises or for
301 the possession of the same or any part thereof that he may
deem expedient and proper, and liberty is hereby reserved to defendants to move for the rescinding of this order at any time after filing their answers to said bill on giving to complainant five days' notice of such motion; and it is further ordered that before said Rugby Marsh proceeds to act as receiver by virtue of this order he shall file in this cause a bond to the United States in the penalty of sixteen hundred dollars, executed by himself, with a

surety or sureties to be approved by the court or a justice thereof, conditioned for the faithful performance of the trust reposed in him by this order or which may be reposed in him by any further decree or order in the premises.

BY THE COURT.

BAINBRIDGE H. WEBB,
Sol. for Schwartz et al.

302 *Receiver's Bond.*

Filed May 26, 1875. R. J. Meigs.

Know all men by these presents that we, Rugby Marsh and Henry Walter, of the city of Washington, in the District of Columbia, are held and firmly bound unto the United States in the full and just sum of sixteen hundred (1,600) dollars, current money, to be paid to the said United States or its certain attorney; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty-fourth day of May, A. D. 1875.

Whereas by a decree of the supreme court of the District of Columbia, passed at a special term thereof in equity cause No. —, wherein Peter Pippert is complainant and Alexander English *et al.* are defendants, the above-bounder Rugby Marsh has been
303 appointed receiver to collect the rents of the property described in the bill in said cause:

Now, the condition of the above obligation is such that if the above-bounder Rugby Marsh do and shall well and faithfully perform the trust reposed in him by said decree or that may be reposed in him by any future order or decree in the premises, then the above obligation to be void; otherwise to remain in full force and virtue in law.

RUTGAY MARSH. [SEAL.]
HENRY WALTER. [SEAL.]

Signed, sealed, and delivered in the presence of—
S. T. THOMAS.

Approved:
A. WYLIE.

Unobjectionable to me.

BAINBRIDGE H. WEBB,
Sol. for Def't.

304 *Pro Confesso vs. Alex. & Elizabeth English.*

Filed July 9, 1875. R. J. Meigs.

In the Supreme Court of the District of Columbia, July Special Term, 1875.

PETER PIPPERT
v.
ALEXANDER ENGLISH *et al.*

This cause came on to be heard at this term upon motion of the plaintiff for a decree *pro confesso* against defendants Alexander English and Elizabeth A. English, and it appearing to the court that the order for the appearance of said defendants passed in this cause on the 13th day of May, 1875, has been duly published, and the said defendants failing to appear and plead, answer, or demur to the bill in this cause, it is therefore this 9th day of July, A. D. 1875, ordered, adjudged, and decreed that the allegations in said bill contained be, and the same are hereby, taken for confessed as against said defendant-.

By the court:

A. WYLIE, *Justice.*

305 OFFICE OF THE EVENING STAR,
WASHINGTON, D. C., *July* 9, 1875.

I hereby swear that the advertisement of which the annexed is a copy was published in the Evening Star once a week until June 1st, 1875, commencing May 17th, 1875.

CROSBY S. NOYES.

Subscribed and sworn to before me this 9th day of July, 1875.

[NOTARIAL SEAL.]

SAM'L G. YOUNG, [SEAL.]
Notary Public.

In the Supreme Court of the District of Columbia, the 13th Day of May, 1875.

PETER PIPPERT
vs.
ALEXANDER ENGLISH *et al.* } No. 4266, Equity Docket No. 14.

On motion of the plaintiff, by Mr. L. G. Hine, his solicitor, it is ordered that the defendants Alexander English and Elizabeth A. English cause their appearance to be entered on the first rule day occurring forty days after this day; otherwise the cause will
306 be proceeded with as in case of default.

By the court:

A. WYLIE, *Justice, &c.*

True copy.
Test:

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Ass't Clerk.

(May 17–m. 3t.)
14—129

Answer of Andrew Schwartz, Sr.

Filed Aug. 10, 1875. R. J. Meigs.

In the Supreme Court of the D. C.

PETER PIPPERT
vs.
ENGLISH *et al.* } In Equity. No. 4266.

The separate answer of Andrew Schwartz, Sen., to the plaintiff's bill of complaint.

The respondent, reserving unto himself all manner of exceptions, &c., answering, says:

1. He is uninformed, and therefore unable to answer, as to the first article of the bill.

2. He admits the allegations contained in the second article of the bill, except that part in reference to the place of residence of Alexander and Elizabeth A. English, which part the re-
307 spondent cannot admit or deny.

3. As to the allegations contained in the fourth article of the bill the respondent says:

On or about the 1st of July, A. D. 1874, the plaintiff called at the office of respondent's and stated that he was the owner of the property referred to in the bill; that his children were cutting up badly, and that he desired to have this property sold and live upon the interest of the money. About the 20th of the same month this respondent submitted to the plaintiff a proposition, the terms of which are incorporated in the deed of trust referred to in the bill; which said proposition the plaintiff assented to, expressing himself well satisfied with the terms. The plaintiff thereupon took the said deed of trust before execution from the office of respondent's, stating that he desired to show it to some one, and returned it shortly afterwards stating that it was all right except as to the number of feet, but he afterwards saw the deed was right in
308 that respect.

4. This respondent denies the allegations contained in the 6th article of the bill, and avers that the plaintiff was well informed of the contents of said deed of trust.

5. The payment and deductions for commissions referred to in the 8th article of the bill were in accordance with an express stipulation between plaintiff and this respondent.

6. This respondent denies the allegations contained in the 9th and 10th articles of the bill and pronounces them false and libellious.

7. As to the 12th article of the bill, this respondent says that he finds upon examination that the policy of insurance has expired, but he denies that any interest is in arrears; he avers that one reason for the non-renewal of the policies of insurance is that the

plaintiff has prevented the respondent from realizing any
309 benefit from said property by authorizing the tenants thereof not to pay any rent.

8. As to the 14th article of the bill, this respondent pronounces as false the allegation that he deceived the plaintiff, and therefore he could not and would not alter or reform the deed of trust even if the plaintiff desired it.

9. The plaintiff denies the allegations set forth in the 16th article of the bill and pronounces the same false and preposterous.

And having fully answered, &c., this respondent prays to be hence dismissed, &c.

A. SCHWARTZ.

BAINBRIDGE H. WEBB,
Sol. for Def't And. Schwartz, Sen.

Affidavit of respondent, A. Schwartz, Sr., waived until his return to the city.

L. G. HINE,
Sol'r for Pl'ff,
Per T.

Subscribed & sworn to before me this 18th of Aug., 1875.
R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Ass't Clerk.

310 *Answer of A. Schwartz, Jr.*

Filed Aug. 10, 1875. R. J. Meigs.

In the Supreme Court of the D. C.

PETER PIPPERT
v. } In Equity. No. 4266.
ENGLISH *et al.*

The separate answer of Andrew Schwartz, Jun., to the plaintiff's bill of complaint.

This respondent, reserving unto himself all manner of exceptions, &c.; and answering so much of complainant's bill as he is advised that it is necessary for him to answer, says:

1. I am cotrustee with F. E. Lackey in the deed of trust mentioned in the bill. I was present when my father suggested to plaintiff that I and Lackey should be the trustees, and he expressed himself perfectly satisfied. I deny the allegation contained in the ninth article of the bill that I conspired for the purpose of unjustly depriving the plaintiffs of his property. As to the allegation contained in the 13th article of the bill, it is probable that I did
311 say that English had disposed of his property and left the city, for I had heard this from several parties, but knew nothing about it myself.

2. I deny the allegation contained in the 15th article of the bill.

The plaintiff and A. E. L. Keese (late justice of the peace) called upon me with some papers, the contents of which I knew nothing about, and desired me to sign them, saying that I would make several hundred dollars by doing so, but I declined to do it until I could consult a lawyer who would explain to me whether I ought to do it or not.

And, having fully answered, this respondent prays to be hence dismissed with costs, &c.

ANDREW SCHWARTZ, JR.

BAINBRIDGE H. WEBB,
Sol'r for Def't Andrew Schwartz, Jr.

312 I do solemnly swear that I have read the above answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that those stated upon information and belief I believe to be true.

ANDREW SCHWARTZ, JR.

Subscribed and sworn to before me Aug. 10, '75.

R. J. MEIGS, *Cl'k*,
By R. J. MEIGS, JR., *Ass't.*

313 *Answer of Mary Ann Schwartz.*

Filed Aug. 10, 1875. R. J. Meigs.

In the Supreme Court of the D. C.

PIPPERT
vs.
ENGLISH *et al.* } In Eq. No. 4266.

The separate answer of Mary Ann Schwartz to the plaintiff's bill of complaint.

This respondent, reserving to herself all manner of exceptions, &c., answering, says:

She has no knowledge concerning the allegations contained in the said bill of complaint, and is therefore unable to admit or deny the same.

BAINBRIDGE H. WEBB,
Sol'r for Def't Mary Ann Schwartz.

Affidavit waived.

L. G. HINE,
Sol'r for Pl'f't,
Per T.

314 *Answer of F. E. Lackey.*

Filed Aug. 18, 1875. R. J. Meigs.

In the Supreme Court of the D. C.

PIPPERT
v.
ENGLISH *et al.* } Eq. 4266.

The separate answer of F. E. Lackey to the plaintiff's bill of complaint.

This respondent, reserving unto himself all manner of exceptions, &c., answering, says:

He has no knowledge of the matters referred to in the bill, and is therefore unable to admit or deny the same.

F. E. LACKEY.

BAINBRIDGE H. WEBB,
Sol'r for Lackey.

315 *Replication.*

Filed Sep. 24, 1875. R. J. Meigs.

In the Supreme Court of the District of Columbia.

PIPPERT
v.
ENGLISH *et al.* } In Equity. No. 4266, Doc. 14.

The plaintiff hereby joins issue with defendants.

L. G. HINE,
Sol'r for Pl'ff.

316 *Decree Cancelling Deed of Trust.*

Filed Oct. 11, 1875. R. J. Meigs.

In the Supreme Court of the District of Columbia, October Special Term, 1875.

PETER PIPPERT
v.
ALEXANDER ENGLISH *et al.* } In Equity. No. 4266, Doc. 14.

This cause came on to be heard at this term upon the pleadings and decree *pro confesso* against defendants Alexander English and Elizabeth A. English passed at the July special term (1875) of this court, and the same having been submitted without argument—

It is this 11th day of October, A. D. 1875, ordered, adjudged, and decreed that said decree *pro confesso* be, and the same is hereby, made absolute, and it is hereby further ordered, adjudged, and de-

creed (upon complainant delivering up the promissory notes mentioned in the deed of trust hereinafter mentioned) that the deed executed and delivered by complainant and wife to defendants Elizabeth A. English and Andrew Schwartz, Senior, on the
317 27th day of July, A. D. 1874, and duly recorded in Liber No. 759, at folio 49 *et seq.*, and the deed of trust executed and delivered by defendant Elizabeth A. English, by her attorney, defendant Alexander English, to defendants Andrew Schwartz, Junior, and F. E. Lackey, trustee, on said 27th day of July and duly recorded in Liber No. 759, at folio 68 *et seq.*, of the land records of the District of Columbia, be, and the same are hereby, declared utterly void and annulled; and it is hereby further ordered, adjudged, and decreed that defendants Elizabeth A. English and Andrew Schwartz, Senior, do within ten (10) days from the date hereof deliver up the said deed to be cancelled; otherwise this decree to operate as a reconveyance of the real estate therein described.

And it is hereby further ordered that said defendants pay the costs of this suit.

By the court:

A. B. OLIN, *Justice.*

We consent to this decree.

BAINBRIDGE H. WEBB,
Sol. for Schwartz.

318 Filed Oct. 11, 1875. R. J. Meigs.

$1,000. WASHINGTON CITY, D. C., *July 27th*, 1874.

Three years after date we promise to pay to the order of Peter Pippert one thousand dollars, three-fourths of the amount to be paid by E. A. English and one-fourth by A. Schwartz, Sen., value received, with interest at the rate of seven per cent. per annum, interest due and payable semi-annually.

No. ——. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ, "SEN'R."

Filed Oct. 11, 1875. R. J. Meigs.

$1,000. WASHINGTON CITY, D. C., *July 27th*, 1874.

Four years after date we promise to pay to the order of Peter Pippert one thousand dollars, three-fourths of the amount to be paid by E. A. English and one-fourth by Andrew Schwartz, Sen'r, value received, with interest at the rate of seven per cent. per annum, interest due and payable semi-annually.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ, SEN'R.

319 Filed Oct. 11, 1875. R. J. Meigs.

$1,000. WASHINGTON CITY, D. C., *July 27th*, 1874.

Five years after date we promise to pay to the order of Peter Pippert one thousand dollars, three-fourths of the amount to be paid by E. A. English & one-fourth by A. Schwartz, Sen'r, value received, with interest at the rate of seven per cent. per annum, interest due and payable semi-annually.

No. ——. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ, SEN'R.

Filed Oct. 11, 1875. R. J. Meigs.

$1,000. WASHINGTON CITY, D. C., *July 27th*, 1874.

Six years after date we promise to pay to the order of Peter Pippert one thousand dollars, three-fourths of the amount to be paid by E. A. English & one-fourth by A. Schwartz, "Sen'r," value received, with interest at the rate of seven per cent. per annum, interest due and payable semi-annually.

No. ——. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ, SEN'R.

320 Filed Oct. 11, 1875. R. J. Meigs.

$1,000. WASHINGTON CITY, D. C., *July 27th*, 1874.

Seven years after date we promise to pay to the order of Peter Pippert one thousand dollars, three-fourths of the amount to be paid by E. A. English & one-fourth by A. Schwartz, Sen'r, value received, with interest at the rate of seven per ct. per annum, interest due and payable semi-annually.

No. ——. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ, SEN'R.

Filed Oct. 11, 1875. R. J. Meigs.

$1,000. WASHINGTON CITY, D. C., *July 27th*, 1874.

Eight years after date we promise to pay to the order of Peter Pippert one thousand dollars, three-fourths of the amount to be paid by E. A. English & one-fourth by A. Schwartz, Sen'r, value received, with interest at the rate of seven per ct. per annum, interest due and payable semi-annually.

No. ——. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ, SEN'R.

321 Filed Oct. 11, 1875. R. J. Meigs.

$1,000. WASHINGTON CITY, D. C., *July* 27, 1874.

Nine years after date we promise to pay to the order of Peter Pippert one thousand dollars, three-fourths of the amount to be paid by E. A. English & one-fourth by A. Schwartz, Sen'r, value received, with interest at the rate of seven per cent. per annum, interest due and payable semi-annually.

No. ——. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ, SEN'R.

Filed Oct. 11, 1875. R. J. Meigs.

$1,000. WASHINGTON CITY, D. C., *July 27th*, 1874.

Ten years after date we promise to pay to the order of Peter Pippert one thousand dollars, three-fourths of the amount to be paid — E. A. English and one-fourth by A. Schwartz, Sen'r, value received, with interest at the rate of seven per ct. per annum, interest due and payable semi-annually.

No. ——. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ, SEN'R.

322 Filed Oct. 11, 1875. R. J. Meigs.

$1,000. WASHINGTON CITY, D. C., *July 27th*, 1874.

Eleven years after date we promise to pay to the order of Peter Pippert one thousand dollars, three-fourths of the amount to be paid by E. A. English and one-fourth by A. Schwartz, Sen'r, value received, with interest at the rate of seven per ct. per annum, interest due and payable semi-annually.

No. ——. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ, SEN'R.

Filed Oct. 11, 1875. R. J. Meigs.

$1,390.42. WASHINGTON CITY, D. C., *July 27th*, 1874.

Twelve years after date we promise to pay to the order of Peter Pippert one thousand three — and ninety $\frac{42}{100}$ dollars, three-fourths of the amount to be paid by E. A. English & one-fourth by A. Schwartz, Sen'r, value received, with interest at the rate of seven per ct. per annum, interest due and payable semi-annually.

No. ——. Due ——.

ELIZABETH A. ENGLISH,
By A. ENGLISH.
A. SCHWARTZ.

323 *Index to Equity No.* 4724.

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Bill of complaint. Filed Nov. 30, 1875.

Supreme Court of the District of Columbia, Special Term.

WM. TYLER
vs.
LEOPOLD LUCHS, MAX LUCHS, WALTER EVANS. } No. 4724, Equity Docket.

To the Honorable Andrew Wylie, one of the justices of the supreme court of the District of Columbia, holding a special term of said court:

The complainant respectfully shows:

1st. That he is a citizen of the District of Columbia, and that the above-named defendants are also citizens of said District.

2d. The complainant on the seventeenth day of September, 1875, executed *these* two promissory notes, the one for the sum of one thousand dollars and the other for the sum of five hundred dollars,

each in favor of the firm — Luchs & Bro., composed of said *complainants* (?) Leopold Luchs & Max Luchs; said notes were payable in sixty days from date.

3d. That to secure the payment of said notes and the interest thereon at maturity the said complainant deposited with said Luchs & Bro., as collateral security, a certain other promissory note, bearing date the tenth day of January, A. D. 1873, and payable three years after date to the order of James Lynch, for the sum
325 of six thousand dollars, with interest at the rate of — per ct. per annum, signed by one Charles A. McEwen and endorsed by said James Lynch and by said complainant; said last-mentioned note of said McEwen so deposited as collateral as aforesaid was secured by a deed of trust on square No. 936, city of Washington, District of Columbia.

4th. That said square No. 936 is worth at least ten thousand dollars in the market; that said note hereinbefore referred to for six thousand dollars is a note for the postponed payment of the purchase-money of said square and constitutes the first lien thereon.

5th. That complainant after depositing said note as collateral security as aforesaid with the said Luchs & Bro. gave to one Greenbury Watkins a lien thereon to secure the payment of a certain other promissory note of this complainant for one thousand dollars in favor of said Watkins, bearing date the 23d day of October, 1875, and payable sixty days after date.

326 6th. This complainant having failed to meet his promissory notes for one thousand and five hundred dollars respectively given as aforesaid to said Luchs & Bro., the said Leopold Luchs & Max Luchs, composing the firm of Luchs & Bro., at the maturity of said notes advertised and sold, as this complainant is informed, the said note for six thousand dollars so deposited with them as collateral as aforesaid, and at said sale the said defendant Walter Evans became the purchaser thereof at and for the sum of two thousand dollars; that the sale of said note was first advertised on the morning of Monday, the twenty-ninth of November, 1875, to take place at twelve o'clock of that day at the auction-rooms of Thomas Dowling, as will appear by reference to said advertisement, herewith filed, marked "A," and prayed to be taken as part of this bill.

7th. This complainant avers that he knew nothing of said
327 sale whatever until after the same had taken place, and never saw said advertisement until the same was sent to him in a communication from the said defendant Leopold Luchs, bearing date November 30th, and professing, *sender* an account of sale, that he had been notified at the maturity of his said notes that if the same were not paid said collateral would be sold, and, being unable at the time to pay said notes, — had been carefully inspecting the journals of the day for the purpose of seeing any advertisement of sale that might be published in order that he might be present and realize the full value of said note by representing to persons disposed to purchase the entire sufficiency of the property deeded in trust to secure the ultimate payment thereof.

8th. This complainant is informed and believes that the said Watkins, having learned that the said defendants Leopold & Max Luchs contemplated *of* disposing of said note in the mar-
328 ket, went to said parties, and for the benefit of the lien he held on said note as aforesaid offered to redeem the same from the lien of the said Leopold & Max Luchs by the payment of the debt due by this complainant as aforesaid to them, but the said Leopold & Max Luchs refused to receive said payment or to allow the said Watkins so to redeem from their lien, and subsequently sold the said note as aforesaid.

9th. This complainant alleges & charges that the price paid for said note at said sale as aforesaid was not more than one-third the market value thereof or much more than one-third the amount that could be obtained therefor from any person desiring to invest in paper secured beyond all danger of possible loss, and he believes & charges that the sale of said note was a fraudulent scheme devised by said defendants to defraud & cheat this complainant and the said Greenbury Watkins; that the notice of said sale
329 or advertisement thereof was such that it could not have been expected that parties would have seen the same in time to attend such sale, said advertisement appearing in the morning and notifying that a sale would take place at noon of that day; and this defendant says that he is informed & believes that even the said Greenbury Watkins knew nothing whatever of said sale until after the same had taken place, and he charges that the said defendants, Luchs & Luchs, purposely omitted to intimate to said Watkins the time or place when or where any sale of said note would be made in order that he might not be present and by bidding therefor interfere with the successful execution of their scheme of fraud on this complainant & himself; and this complainant further charges on information & belief that the said Evans was not a *bona fide* purchaser of said note, but that he bid
330 for & purchased the same in the interest of the said defendants, Luchs & Luchs, in execution of a conspiracy and confederation between him & said Luchs & Luchs to defraud & swindle this complainant out of his property.

10th. This complainant says that said note is duly endorsed as aforesaid, and therefore negotiable in the market by delivery, and that unless the said defendants are enjo*ye*ned from negotiating the same it may be passed to some *bona fide* holder without notice of the complainant's rights in the premises; that the complainant is without remedy at law, and to the end that the said defendants may, if they can, show why he should not have the relief hereby sought and may answer this bill under their several & respect*ful* oaths—

Complainant prays:

1. That the writ of subpœna be issued against the said defendants commanding them to appear, &c.

331 2. That the sale of said note may be decreed to be fraudulent & void & set aside, and that the complainant may be allowed to redeem the same from the lien of the defendants within some period of time to be specified in the decree, and in default of

so redeeming the court may appoint a trustee to take and sell said asset upon such terms as this court may prescribe and apply the proceeds in such manner as this court may direct.

3. That the defendants may be severally & respectively enjoyened & prohibited from passing away, negotiating, or disposing of said note.

4. That the complainant may have such other and further relief as the nature of his case may require.

The defendants *of* this bill are Leopold Luchs, William Tyler, Max Luchs, Walter Evans.

WM. D. CASSIN,
Solct. for Complainant.

332 DISTRICT OF COLUMBIA, *To wit:*

I do solemnly swear that I have read the bill by me subscribed and know the contents thereof, and the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

WILLIAM TYLER.

Subscribed & sworn to before me this 30th of Nov., 1875.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

Summons to Answer.

Issued Nov. 30, 1875.

In the Supreme Court of the District of Columbia, the 30th Day of Nov'r, 1875.

WILLIAM TYLER, Complainant,
against
LEOPOLD LUCHS *et al.*, Defendant-. } No. 4724, Eq'y Dock. 15.

Subpœna to Answer.

333 The President of the United States to Leopold Luchs, Max Luchs, and Walter Evans, defendant-:

You are hereby commanded to appear in this court, at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Carter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

MEMORANDUM.—That the defendant- herewith served *is* to enter appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

334 EXHIBIT A TO BILL.

Auction Sales.

Thomas Dowling, auctioneer and real-estate broker, at the old stand of Latimer & Cleary, southwest corner of Pennsylvania avenue and Eleventh street.

By direction of the holder, under a contract held by him, I shall sell at public auction to the highest bidder, at my auction-room, corner Pennsylvania avenue and Eleventh street, at 12 o'clock noon, sharp, on Monday, November 29, the following-described deed-of-trust note, viz., for $6,000, drawn by Charles A. McEwen to the order of James Lynch, and indorsed by said Lynch and by William Tyler, with interest thereon at 6 per cent. per annum, due since the date of issue.

Terms, cash.

THOMAS DOWLING,
Auctioneer.

335 *Marshal's Return.*

Sum'n'd & served notice for injunction on all the def'ts.
Nov. 30, '75.

ALEX. SHARP, *Marshal.*

Cassin.
Nov. 30, '75. O'Connell.

Restraining Order.

The defendant- *is* hereby restrained, as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the 7th day of December, 1875, of which take notice.

By the court:

D. C. HUMPHREY, *Justice.*

In absence of Justice Wylie.

D. C. H.

336 *Answer of Leopold Luchs.*

Filed Dec. 7, 1875. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
vs.
LEOPOLD LUCHS *et al.* } No. 4724. Equity.

The separate answer of Leopold Luchs to the bill of complaint of Wm. Tyler, plaintiff, against him and others in equity exhibited.

For answer to said bill or so much thereof as I am advised it is material and proper for me to make answer unto I say as follows:

1st. I admit the parties to this cause are residents of this District.

2nd. I admit that the said Wm. Tyler executed his two promissory notes, dated Sept. 17th, 1875, for $1,000 and $500 respectively, payable sixty days after date, with interest at the rate of ten
337 per centum per annum until paid, but aver that the same were in favor of myself and not of the firm of Luchs & Bro.

3rd. I admit that the plaintiff deposited with me as collateral security for said two notes said note for six thousand dollars mentioned in this paragraph of said bill; which said note I was authorized to sell at public or private sale on three days' notice to the plaintiff in case of default made in the payment of either of said notes for $1,000 and $500 respectively.

And I aver that default was made in the payment of both of said notes, and that I caused to be served a written notice upon the plaintiff on Nov. 24th, 1875, that unless the same were paid within three days said collateral note would be sold at public auction.

4th. I deny that said square No. 936 is worth at least ten
338 thousand dollars, but believe the same is worth, provided a good title could be given therefor, less than the sum of six thousand dollars.

5th. I admit that the plaintiff gave or attempted to give E. Greenbury Watkins a subsequent lien on said collateral note for the sum of one thousand dollars.

6th. I admit that I caused said collateral note to be advertised for sale at public auction on Monday, November 29th, 1875, at 12 o'clock m., and that Exhibit A filed with said bill is a true copy of said advertisement; that said note was sold in accordance therewith, and that Walter Evans became the purchaser thereof at and for the sum of two thousand dollars.

7th. I do not know whether the plaintiff saw said advertisement or not or whether he was inspecting the journals of the day for the purpose of seeing if it was in or not, but would suppose that
339 if he had been so inspecting the papers he must have seen it as it appeared in the Daily Chronicle, a paper of large circulation.

8th. I deny that the said Watkins offered to redeem said note by paying the amount due. On the contrary, said Watkins said that Dodge & Darneille would act in the matter for him, and said Dodge and Darneille offered to pay the amount due me by a certain time, which they failed to do, and I waited for them a still further time at their request, and they still failed to redeem said note.

9th. I deny that the price paid for said note at said sale was not more than one-third the market value thereof or of the amount which could be obtained from any person desiring to invest in real-estate paper.

I deny that said sale was a fraudulent scheme to defraud
340 and cheat the plaintiff and said Watkins, and that I purposely omitted to intimate to said Watkins the time and place of sale in order that he might not be present, and I deny all other allegations of fraud and conspiracy alleged or intimated in said bill.

10th. Further answering said bill, I say that said sale was duly

made according to law; that the same was well attended, and that said note brought its full market value.

That a full and complete abstract of the title to said real estate was exhibited at said sale and those in attendance fully informed, as to said property, which said abstract is filed herewith, marked "Exhibit No. 1."

That the title in the grantor under the deed of trust on said square of ground securing said note was nothing but a tax title, which very materially diminishes the market value of said property; that the arrearages of taxes on the said square amount
341 to over two thousand dollars.

That the maker and endorser of this note are, as this defendant is informed & believes, irresponsible.

That said sale was fairly and publicly made and said note brought its full market value under the said conditions of the title to said land.

And, having answered fully, I pray that said bill may be dismissed with costs.

LEOPOLD LUCHS.

I, Leopold Luchs, do swear that I have read the foregoing answer signed by me and know the contents thereof; that the several matters therein stated as of my personal knowledge are true, and those stated on information and belief I believe to be true.

LEOPOLD LUCHS.

Subscribed and sworn to before me this sixth day of December, A. D. 1875.

[SEAL.] C. F. M. FAEHTZ,
Notary Public.

342 *Answer of Max Luchs.*

Filed Dec. 7, 1875. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
vs.
LEOPOLD LUCHS *et al.* } No. 4724. Equity.

The separate answer of Max Luchs, defendant, to the bill of complaint of Wm. Tyler, exhibited against him and others in this cause.

For answer to said bill, or so much thereof as I am advised it is material and proper to make answer unto, I answer as follows:

I disclaim all interest whatever in the subject-matter of said suit, the said Leopold Luchs, of said firm of Luchs & Bro., having been alone interested therein, the same not having been a transaction made by or in the interest of the partnership.

MAX LUCHS.

I, Max Luchs, do swear that I have read the foregoing answer signed by me and know the contents thereof; that the several matters therein stated as of my personal knowledge are
343 true, and those stated on information and belief I believe to be true.

MAX LUCHS.

Subscribed and sworn to before me this sixth day of December, A. D. 1875.

[SEAL.] E. F. M. FAEHTZ,
Notary Public.

Answer of Walter Evans.

Filed Dec. 7, 1875. R. J. Meig-.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
vs.
LEOPOLD LUCHS, MAX LUCHS, and WALTER EVANS. } No. 4724, Eq. Doc. 15.

Separate answer of the defendant Walter Evans.

For answer to the bill of complaint this defendant says as follows:

344 1. I admit that the parties to this suit reside in the District of Columbia.

2. To the best of my information and belief, the averments of the second paragraph of the bill are true.

3. The third paragraph is true, too.

4. I deny that square 936, in Washington city, is worth ten thousand dollars. To the best of my knowledge and belief, it is not worth, with a good title, more than four thousand five hundred dollars in cash. Its present assessed value is $6,385. It was sold for taxes in June, 1875, the taxes for which it was sold, with costs of sale, amounting to $551.37, which sum bears interest at ten per cent. from the day of sale. The tax for the current year is also unpaid and amounts to $95.78. There are also taxes due and unpaid on this square for special improvements amounting to about $1,600.

345 5. I know nothing of the matters set forth in the fifth paragraph of the bill.

6. I admit the truth of the averments of the 6th paragraph of the bill, except that I say that the note was ten days overdue when sold, and that the complainant had previously had three days' written notice that it would be sold if not paid.

7. I have no knowledge as to the allegations of the 7th paragraph of the bill.

8. On information and belief, I deny the statements made in the 8th paragraph of the bill.

9. I deny that the price paid by me for the $6,000 note mentioned in the bill was not more than one-third its value and *a part* that I

paid for it all that it is worth or more. I deny that
346 the sale was a fraudulent scheme to defraud the complainant or to defraud Greenbury Watkins, and aver that I brought the note and paid for it in good faith, and that I hold it now in my own right. On information and belief, I deny that my codefendants purposely omitted to intimate to said Watkins the time and place of sale, and I deny all charges of fraud set up in the bill and all charges of collusion between myself and my codefendants or either of them. I deny that I purchased said note in the interest of the said Luchs & Luchs or of either of them.

10. I admit that said note is in form negotiable.

Further answering, this defendant says that the maker and endorsers of said note are wholly irresponsible, and that whatever value it may have is derived from the deed of trust by which
347 it is secured. The grantor in said deed of trust, McEwen, is the maker of the note. Said McEwen has, and when the deed of trust was executed had, only a tax title to square 936, as will *now* fully appear from the abstract of title filed with the answer of the defendant Leopold Luchs.

This defendant believes that he has paid for said note its full market value, and that he cannot in the present state of the title to said square sell the note for more than he paid for it. There were several buyers present at the sale. The abstract of title referred to was exhibited to them, and it was because of the defective title, and not because of insufficient notice, that the note sold for less than its apparent value.

WALTER EVANS.

STANTON & WORTHINGTON,
Solicitors for Def't Evans.

348 I, Walter Evans, on oath say that I have read the foregoing answer by me subscribed; that the statements therein made as of my own knowledge are true, and that these *read* upon information from others I believe to be true.

WALTER EVANS.

Sworn to and subscribed before me, a notary public in and for the District of Columbia, this the 7th day of November, A. D. 1875.

WM. H. MINNIX,
[SEAL.] *Notary Public.*

349 *Affidavits of Dodge & Darneille.*

Filed Dec. 9, 1875. R. J. Meigs.

DISTRICT OF COLUMBIA, } ss:
Washington County, }

Robert P. Dodge, being first duly sworn, makes oath and says that his partner, Mr. Philip A. Darnielle, acting as the agent of Mr. Greenbury Watkins, who held the second lien on the note of Charles McEwen for $6,000, secured by deed of trust on square No. 936, city

of Washington, and referred to in the bill of complaint of Wm. Tyler *vs.* L. Luchs *et al.*, No. —, equity, some day or two before the 26th day of November, A. D. 1875, offered to purchase of Mr. Luchs said $6,000 note at and for the sum of $2,000; that on the evening of the 26th day of November, A. D. 1875, this affiant went with said Luchs to the house of said Darnielle in Georgetown, D. C., for the purpose, as he understood, of consummating said transaction; that on that occasion said Luchs declined to dispose of said note for $2,000, and assigned as a reason that he had been offered
350 $2,800 for it, and he might as well make the difference as any one else; thereupon said Darnielle offered him, as the agent of Wm. Tyler, to pay the notes of said Tyler, amounting to $1,500, for which said Luchs held said $6,000 note as collateral, with all interest and costs thereon, and said Luchs refused to accede to the same, stating that he had no right to do so, as the notes were held by his brother; that after this and at the same conversation he agreed with said Darnielle to surrender said $6,000 note on the payment of $2,000 and all interest and costs that had accrued on said $1,500 of Wm. Tyler notes, and the further condition that he, Darnielle, was to allow him one-third of all nett proceeds from sale of said $6,000 on the land upon which said note was secured over and above $4,500, provided said $2,000 was paid the next day. On the 27th of Nov'r, 1875, this affiant and Darnielle went to said Luchs' store on 7th street with the money
351 in hand, but asked an indulgence until Monday, the 29th, as Mr. Watkins was not able to come to the city, which said Luchs declined until he could see his brother. This affiant heard nothing further from said Luchs until after the sale of said note; that on the 25th or 26th day of November, A. D. 1875, this affiant left with said Luchs the note of $1,000 of Wm. Tyler in form of said Watkins, and for which said Watkins had a lien on said $6,000 note for collection on protection, he, said Luchs, agreeing to notify this affiant or Darnielle, in case of any notice of public sale, so that this affiant or Darnielle might be present at such a sale. Said Luchs failed to give this affiant or said Darnielle notice of the advertisement or of the sale of said note. This affiant knew nothing of said sale until an hour or more after said sale had taken place.

ROB'T P. DODGE.

352 Subscribed and sworn to before me this 8th day of December, 1875.

E. J. MIDDLETON, JR.,
Notary Public.

[SEAL.]

DISTRICT OF COLUMBIA, *Washington County,* } *ss:*

Philip A. Darnielle, being first duly sworn, makes oath and says that he has heard read the foregoing affidavit of Robert P. Dodge, and the facts therein stated are true to the best of his knowledge.

P. A. DARNIELLE.

Subscribed & sworn to before me this 8th day of December, 1875.

E. J. MIDDLETON, JR.,
Notary Public.

[SEAL.]

353 *Replication.*

Filed Jan. 4, 1876. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WM. TYLER
vs.
THEODORE LUCHS *et al.* } Equity. No. 4724.

The complainant joins issue with the defendants' answers to the bill of complaint in the above cause.

WM. D. CASSIN,
R. T. MERRICK,
Solic't's for Compl.

Injunction Continued until Final Hearing.

Filed Jan. 4, 1876. R. J. Meigs.

In the Supreme Court of the District of Columbia, the — Day of December, 1875.

WILLIAM TYLER, Complainant,
vs.
LEOPOLD LUCHS, MAX LUCHS, and WALTER EVANS, Defendants. } No. 4724. Equity.

354 This cause coming on to be heard upon the complainant's application for a writ of injunction upon the bill and answers in the cause, and counsel being heard thereon, it is, upon consideration thereof, ordered by the court, this 4th day of January, A. D. 1876, that the defendants, Leopold Luchs, Max Luchs, and Walter Evans, and each of them, be, and they are hereby, severally and respectively enjoined and restrained from passing away, negotiating, or in any manner whatever disposing of or transferring the promissory note mentioned in the bill of complaint filed in this cause, to wit, the promissory note for six thousand dollars ($6,000) drawn by Charles A. McEwen to the order of James Lynch and indorsed by said Lynch and by the complainant, William Tyler, until the final hearing of this cause and the further order of this court in the premises: Provided, that nothing herein contained shall pre-
355 vent the defendant Evans from using all proper means to collect said note at maturity from the maker or endorsers thereof.

BY THE COURT.

Injunction Bond.

Filed Jan. 4, 1876. R. J. Meigs.

In the Supreme Court of the District of Columbia, the — Day of December, 1875.

WILLIAM TYLER, Complainant,
vs.
LEOPOLD LUCHS, MAX LUCHS, and WALTER EVANS, Defendants. } No. 4724. Equity.

The complainant, William Tyler, having sued out a writ of injunction against the defendants, Leopold Luchs, Max Luchs, and Walter Evans, on this 4th day of January, A. D. 1876, and J. R. McClellan & William J. Cooke, his sureties, for themselves and each of them, their and each of their heirs, executors, and administrators, appearing and submitting to the jurisdiction of the court, hereby undertake to make good to the defendants all damages by them or either or any of them suffered or sustained by reason of the complainants wrongfully and inequitably suing out the injunction aforesaid; and they agree that the damages may be ascertained in such manner as the court may direct, and that upon dissolving said injunction the court may give judgment thereon against each and all of them for said damages in the decree dissolving the injunction.

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WILLIAM TYLER. [SEAL.]
J. R. McCLELLAN. [SEAL.]
WM. J. COOKE. [SEAL.]

Approved:
A. WYLIE.

357 *Deposition of Greenbury Watkins Ordered.*

Filed Feb. 1, 1876. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WM. TYLER
vs.
LUCHS *et al.* } Equity. No. 4724.

It is by the court, this 1st day of February, A. D. 1876, ordered that A. Thomas Bradly be, and he is hereby, appointed special examiner to take the deposition of Greenbury M. Watkins, *after* interrogatories, on behalf of the complainant. It is further ordered that the complainant have two weeks from this date to take his proof, and the defendants two weeks thereafter to take their proof in reply.

BY THE COURT.

358 *Deposition of G. M. Watkins.*

Filed Feb. 5, 1876. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
v.
MAX LUCHS *et al.* } No. 4724, Eq. Docket 15.

At the execution of the annexed commission, issued out of the supreme court of the District of Columbia in the above-entitled cause, directed to me, and empowering me to examine Greenbury M. Watkins as a witness for the complainant, upon the interrogations annexed to the commission, I, A. Thomas Bradly, this commissioner therein named, did, on Friday, the 4th day of February, A. D. 1876, proceed to the residence of said Greenbury M. Watkins, in Montgomery county and State of Maryland, *did* examine him, after being duly sworn, as to the interrogatories annexed to and issued with said commission, and reduced his answers to writing as follows:

359 In answer to the first interrogatory he says: I know William Tyler and Max Luchs. Leopold Luchs I have seen once, and Walter Evans I do not know.

To the second interrogatory he says: I don't think I ever saw it. I heard of it through Dodge and Darneille and Max Luchs, and also it was described as one of the collaterals in a note of William Tyler's which I held.

To the third interrogatory he says: My interest in the note was to the amount of one thousand dollars, and that was subject to a prior claim of Luchs & Bro. for fifteen hundred dollars. I know of no one else who had any interest — it.

360 To the fourth interrogatory he says: On the morning of the 25th of November, 1875, I was at the office of Dodge and Darneille and Mr. Dodge went out to ask Mr. Luchs to come there. He soon returned with Mr. Max Luchs, and I was introduced to him. Mr. Luchs said that he held a note of William Tyler's for fifteen hundred dollars, and held as collateral therefor a note of Charles A. McEwen for $6,000, secured by deed of trust on square 936; also he held another note of Tyler's for five hundred dollars without any collateral, and he would not give up the $6,000 note until the payment of that $500 was secured to him. I then informed him that I had an interest of one thousand dollars in that McEwen note, subject to his lien of fifteen hundred dollars—a fact with which he seemed to be familiar. I then asked him what course of action he proposed to take in the matter in order to make his money. His answer was that I have notified the parties
361 that I should advertise the collateral for sale, if the matter was not settled in three days, and sell at public auction. He told me that I should be advised of the time of sale, and I said to

him that I would be present and would buy at a sum sufficient to cover my claim of one thousand dollars in addition to the amount of his lien, interest, and costs, which sum I supposed would be about twenty-seven or twenty-eight hundred dollars. As Mr. Max Luchs had promised that I should have notice of the time of public sale, but had said nothing in regard to a private sale, I rode up to the store of Luchs & Bro. and was met by a gentleman who represented himself as one of the firm, and upon my speaking to him in regard to a private sale of that collateral he assured me that they would not part with it without first giving notice to Dodge & Darneille.

362 To the fifth interrogatory he says: On my way home on the 25th November I stopped at the residence of Mr. Darneille, in Georgetown, and while there Mr. Dodge & Mr. Max Luchs came in. During the conversation which ensued Mr. Darneille offered Mr. Luchs $2,000 for the note, which he declined, saying he preferred disposing of it at public sale, but asked Darneille to let him have my note of Tyler's for $1,000, so that if any one came to redeem the $500 note he could show that as a reason for holding the collateral until he could notify Dodge & Darneille, and it was agreed to let him have it; to which I assented.

G. M. WATKINS.

There being no cross-interrogatories filed, I have closed the commissions and herewith return the same, under my hand and seal, this fifth day of February, A. D. 1876.

A. THOS. BRADLY, [SEAL.]
Commissioner.

Commission fee, $10.

363 In the Supreme Court of the District of Columbia.

WILLIAM TYLER
vs.
MAX LUCHS *et al.* } Equity. No. —.

Interrogatories to be Propounded to Greenbury M. Watkins, a Witness on Behalf of the Plaintiff in the — Entitled Cause.

1st interrogatory. Are you acquainted with the parties to this suit?

2d interrogatory. Did you once see or hear of the promissory note of Ch's A. McEwen, drawn Jan. 10th, 1873, and payable 3 years after date, to the order of James Lynch, and secured by deed of trust on whole of square No. 936, for the sum of six thousand dollars, and which is referred to in the bill of complaint in this cause? If yea, state when, where, in whose possession, and under what circumstances you saw it.

364 3d interrogatory. State what interest, if any, you had in

the said note, and the interests of other parties, as far as they are known to you.

4th interrogatory. State what conversations you have had with the defendants or either or any of them in reference to the said promissory note, and when and where you had such conversations, if any.

5th interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

WM. D. CASSIN,
Sol'r for Compl.

365 It is agreed that the clerk may issue a commission to A. Thomas Bradley at once to take Mr. Watkins' deposition on the above interrogatories, and that the defendants may have the witness cross-examined upon written interrogatories within ten days after the examination-in-chief shall have been returned into court.

WM. D. CASSIN,
Solicitor for Complainant.
A. S. WORTHINGTON,
Solicitor for Def't Evans.

366 In the Supreme Court of the District of Columbia, the 1st Day of February, 1876.

WM. TYLER
v.
MAX LUCHS *et al.* } No. 4724, Equity Docket 15.

The President of the United States to A. Thomas Bradley, Greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with power and authority to examine Greenbury M. Watkins as a witness for the complainant in the above-entitled cause upon the interrogatories annexed to this commission, and therefore you are hereby commanded, at a certain day and place or certain days and places to be appointed by you, to cause said witness to come before you, and then and there examine him, on oath or affirmation, upon
367 the said interrogatories, and reduce his testimony into writing, to be signed by said witness; and having so done, annex the same to this writ, closed up under you seals, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

[SEAL.]

Endorsed.

The execution of the within commission appears by the report and schedule hereto annexed.

A. THOS. BRADLEY,
Commissioner.

February 5th, 1876.

368 *Notice to Have Time Fixed for Taking Testimony.*

Filed Feb. 1, 1876. R. J. Meigs.

In the Supreme Court of the District of Columbia, 27th January, 1876.

TYLER
v.
LUCHS *et al.* } No. 4724, Eq. Doc. 15.

Please take notice that on Saturday, the 29th inst., at the opening of the court, *avers now* thereafter as counsel can be heard, we shall move the court to assign a time within which the evidence in this cause shall be taken.

A. STANTON & WORTHINGTON,
Solicitors for Def't Evans.

To Mr. Cassin and M. F. Morris, Esq., solicitors for compl't.

Service acknowledged this 27th day of January, 1876.
M. F. MORRIS.

369 In the Supreme Court of the District of Columbia.

TYLER
vs.
LUCKS *et al.* } In Equity. No. 4724, Doc. 15.

For complainant.

DISTRICT OF COLUMBIA,
County of Washington, } *ss:*

Be it remembered that — an examination of witnesses begun and held on the 2nd day of Feb'y, A. D. 1876, and continued from time to time, by adjournment, until the 14th day of Feb'y, A. D. 1876, when the within depositions were taken, I, John J. Johnson, an examiner in chancery, did cause to be personally present at my office, No. 342 D street, in the city of Washington, in said District, the within-named witnesses, to testify on the part and behalf of the complainant in a certain cause now depending in the supreme court of the District of Columbia, wherein Tyler is complainant and Lucks *et al.* defendants.

JOHN J. JOHNSON,
Examiner in Chancery.

370 TYLER
v.
LUCKS *et al.* } Equity 4724, Doc. 15.

FEB'Y 2, 1876.

Met pursuant to agreement—present, Messrs. Worthington & Cassin—when ROBERT P. DODGE, being sworn, says: I reside in Georgetown, District of Columbia. I know all the parties to this suit except Walter Evans.

Somewhere about the 25th of November, 1875, Mr. Darnelle, my partner, offered to buy from Mr. Lucks this note of $6,000 for $2,000, acting in behalf of Mr. Greenbury M. Watkins, who held a stock note of William Tyler's for one thousand dollars, for which this note of $6,000 was held as collateral security by Mr. Lucks, Mr. Lucks having the first lien of $1,500. This occurred at Mr. Darnelle's house. We had a conversation about it before going to the house, and there the offer was positively made in my presence by Mr. Darnelle. At that time Mr. Lucks refused to take that
371 offer, saying he had an offer of $2,800 for it. Mr. Darnelle then offered him $1,500 for it, on behalf of Mr. Tyler, to liquidate the note of $1,500 which Mr. Lucks held against this $6,000. He refused also to accede to that.

It was finally agreed, however, that he would take, I think, $2,000 for it, in consideration of our giving him one-third of the net profit, I believe, that might arise from the sale of the note or of the ground, over and above the amount for which it was held as security in both cases. I have forgotten the amount. We were about to consummate the bargain on Saturday, I think, of that week, but Mr. Watkins did not come to town, and the matter was put off until Monday, in the hopes that something might be done then. We had, on the day of the conversation at Mr. Darnelle's house, at the suggestion of Mr. Lucks, put into his hands the $1,000 note of Mr. Tyler held by Mr. Watkins, he saying
372 that he would protect it and not deliver the $6,000 note until it was fully paid by anybody who might take up his note of $1,500 for which this was collateral, and at the same time he agreed to give us full notice in case he sold it at public sale. About half past 1 o'clock on the succeeding Monday Mr. Lucks came into the office, & Mr. Dowling, the auctioneer, appeared at the same time, each of whom stated that they had just sold the $6,000 note at Dowling's auction-rooms at 12 o'clock. That was the first notice that we had received of any such sale or advertisement of it. In taking up the $1,500 all interest and cost and whatever might be attached to it was to be paid.

On Saturday, prior to the sale, Mr. Darnelle and myself went to the store of Messrs. Lucks very near three o'clock, to pay the note. I had drawn the money from bank. I don't know that we absolutely agreed to take it up, but asked for indulgence until
373 Monday morning, to see Mr. Watkins. We went prepared to take it up, but feared it would not meet Mr. Watkins' views, and preferred him to be present. We then went to the bank and

redeposited the money. I think Mr. Lucks did not absolutely agree to wait till Monday morning, but said he must see his brother. We inferred from what he said that he would wait. The bargain we made at the house at that time was consummated, by which Lucks was to receive one-third of the net profits over $4,500. Mr. Max Lucks held a note of $500 of Wm. Tyler's endorsed by G. afton Tyler, as he stated, and Greenbury Watkins also held $1,500 of similar paper, so that the net profits were to be over and above there several notes hereinbefore stated—that is to say, $2,000 held by Lucks and $2,500 by Watkins—making $4,500, all of which were to be liquidated, but of the $6,000 before any net profits
374 would be considered. I don't think Mr. Leopold Lucks was present at any of these conversations. It was made with Max Lucks. Max Lucks made the bargain and signed it as if it belonged to him. He agreed to protect us when he received from us the $1,000 note.

The paper now shown me is the paper I saw Mr. Max Lucks sign. (The said papers are filed and marked I. I. I. No. 1 & 2.)

I went with Mr. Lucks to Mr. Darnelle's house in the expectation of consummating the bargain at $2,000.

Cross-examined by Mr. WORTHINGTON:

I. I. I. No. 1.

GEORGETOWN, D. C., *Nov.* 26, '75.

For and in consideration of five dollars, this day payed to us in hand by Dodge & Darneille, we have sold to them one note, drawn by Charles A. McEwen, for the sum of six thousand dollars,
375 with interest from —, and payable to the order of James Lynch and secured by deed of trust on sq. No. 936. This note is held by us as collateral security for William Tyler's note of fifteen hundred dollars and interest from Sept., 1875, and hold ourselves ready to deliver to said Dodge & Darneille the above-named six-thousand-dollar note at any time tomorrow, the 27th Nov., 1875, upon their paying to us the sum of two thousand dollars and all interest and cost that may be due on the within-named note of fifteen hundred dollars.

M. LUCHS,
For LUCHS & BRO.

I. I. I. No. 2.

GEO'TOWN, *Nov.* 26, '75.

We hereby agree to pay to Luchs & Brother one-third of
376 all the net profits that we may receive on $4,500 & interest on the sale of square number 936 or the note of $6,000 of Chas. McEwen, which is secured by said square.

DODGE & DARNEILLE.

So far as I know, we had no authority to act for Mr. Tyler, but presumed to do so under the circumstances in order to obtain the

col-atteral for the benefit of Mr. Watkins, as I understood. The other two-thirds over and above the third that Lucks was to get was to be divided among the holders of the notes that was not settled. I am not sure it was on the 26th of Nov. that Max Lucks promised to send us word before he sold the note, but I am sure it was when he received the $1,000 note from us. I could not recollect the words at all used by Lucks when he said he would
377 send us word, but the substance was that in case anybody came forward and took up the note he would not deliver it until this $1,000 was paid. He also agreed that if it went to public sale he would give us due notice. I heard him tell Mr. Greenbury Watkins the same thing, who was present two or three days before that, at Mr. Darnelle's house, when we all were present—Mr. Lucks, Mr. Darnelle, Mr. Watkins, and myself. I drew the money from the National Bank of the Republic.

I got the money individually from Mr. Coyle. I don't recollect whether I gave my individual obligation to Mr. Coyle for it or the obligation of the firm. Max Lucks may have exhibit*ing* to the witness the affidavit filed in this cause on the 9th of December, and purporting to be signed by the witness, *when* the witness says that is my affidavit and my signature.

I had forgotten that he gave as a reason for not accepting the $1,500 that it was held by his brother, but subsequently, in
378 consummating the bargain, that went out of my mind.

ROB'T P. DODGE.

Sworn and subscribed to before me this 2nd of Feb'y, 1876.

J. J. JOHNSON, *Exam.*

PHILIP A. DARNELLE, being sworn, says:

I reside in Georgetown, D. C. I know all the parties to this suit except Mr. Evans. I have heard read the deposition of Mr. Dodge, and I was present at all the interviews testified to by him, and the conversations testified to by him in the various conversations between the parties therein mentioned are true. I remember, however, some additional facts not testified to by Mr. Dodge. I saw Mr. Leopold Lucks at his store about the $1,000 note of Tyler's held by Watkins. He, Lucks, then spoke of one or two parties having interviewed him relative to the $1,000 note, but that he would
379 do nothing without first seeing us and give us an opportunity to protect Mr. Watkins. Now I wish to say when Dodge and myself went to take up that note, not knowing what to do in the absence of Mr. Watkins, Mr. Max Lucks said to us if we would leave $500 with him on account of that matter he would let us know on Monday what his brother would do. We did not do it, but then he spoke of selling the note at auction, and agreed that he would give us notice so that we could come in and protect Mr. Watkins. I received no notice until the note was sold.

Q. Have you had any conversation with Mr. Lucks, &, if so, which are, since the suit was brought, and what was said?

(Objected to as incompetent.)

A. I saw Mr. Max Lucks since. I asked him if this matter could not be fixed some way or other by letting me take the $6,000 note for my friend Mr. Watkins and returning to him, Lucks, the $2,000.

380 He said the paper had been bought by Mr. Evans, a good man, and that nothing could be done while this thing was in litigation. I then asked him if he was not willing to turn over to me the difference between $1,500 and the $2,000, amount of the sale reported. He said no; he did not know who that would go to; it might all go to pay expenses. I then remarked that I wished him to do nothing in the matter improper.

I had no authority from Mr. Tyler to act whatever. I don't recollect the words that passed between Mr. Cossin and myself, but the amount of it was that Mr. Cossin wished me to take up that $1,500 note to pay off Mr. Lucks, and he would allow the balance of the note to go to Watkins for the $1,000 note, which is secured by the $6,000 note, together with three other notes not secured by the

381 $6,000 note, as I know of. Mr. Cossin said to me if I could make that negotiation that he would see that William Tyler would sign the $6,000 note over to Mr. Watkins.

Cross-examined by Mr. WORTHINGTON:

There was something said by Max Lucks to me about the title to this property being a tax title, and also about the taxes against it. It is my impression at the time that McEwen had but a tax title. Lucks knew it, too.

P. A. DARNEILLE.

Sworn and subscribed to before me this 2nd of Feb'y, 1876.

J. J. JOHNSON, *Exam'r.*

Adjourned till *12* Saturday, the 5th, at 12 m.

J. J. JOHNSON, *Exam'r.*

382 Loans negotiated, real estate exchanged.

Russell & Faehtz, brokers, 515 Seventh street.

WASHINGTON, D. C., *Nov. 24th*, 1875.

Wm. Tyler, Esq.

SIR: Please take notice that the promissory note for $1,000, drawn by you on Sept. 17th, 1875, & payable in 60 days from date, with interest at 10%, having been protested for non-payment on 19th inst., the collaterals deposited by you in security of prompt payment, viz., a note of Chas. A. McEwen, drawn Jan. 10, 1873, payable 3 years after date to the order of James Lynch (& secured by deed of trust on the whole square No. 936) for $6,000, will be sold at public auction after 3 days from date unless you redeem the

same within that period, viz., your own note for $1,000 & interest & protest & other cost.

Yours respectfully, E. F. M. FAEHTZ,
Notary Public & Agent for the Holder.

383 Loans negotiated, real estate exchanged.

Russell & Faehtz, brokers, 515 Seventh street.

WASHINGTON, D. C., *Nov. 24th*, 1875.

Wm. Tyler, Esq.

SIR: Please take notice that the promissory note for $500, drawn by you Sept. 17th, 1875, & payable in 60 days from date, with interest at 10%, having been protested for non-payment on 19th inst., the collaterals deposited by you in security of prompt payment, viz., a note of Chas. A. McEwen, drawn Jan. 10, 1873, payable 3 years after date to the order of Jas. Lynch (& secured by deed of trust on the whole square No. 936), will be sold at public auction after 3 days from date unless you redeem the same within that period, viz., your own note for $500 & interest & protest & other cost.

Yours respectfully, E. F. M. FAEHTZ,
Notary Public & Agent for the Holder.

384 Met pursuant to above—present, counsel for complainant—when E. F. M. FAEHTZ, being sworn, says: I reside in this city. I am a notary public at present. Witness looks at Exhibits I. I. I. No. 3 & I. I. I. No. 4 and says: They are in my handwriting and I served them on Mr. William Tyler, on 15th street, I believe, on the same day of their date. I wrote them. I prepared and served them at the instance of Leopold Lucks—I believe that is his name. (Mr. Leopold Lucks here comes in, when he is recognized by the witness.)

E. F. M. FAEHTZ.

Sworn and subscribed to before me this 5th of Feb'y, 1876.
J. J. JOHNSON, *Exam'r.*

385 WALTER EVANS, being duly sworn, says: I reside in this city. I am interested in real estate, renting and collecting rents. I am also engaged in keeping public dining-rooms. I know Leopold and Max Lucks. I have known Leopold Lucks at least twelve years, probably a little longer. I am the purchaser of the $6,000 note mentioned in these proceedings. I don't think now I can give you the precise date when I first saw the note, but it is between the 15th and the last of November last. I suppose it was two or three days, and perhaps four days, before the day of sale I saw the note. I saw it at Mr. Lucks' store and in possession of Mr. Leopold Lucks. I suppose I must have seen it there; there is where I had a conversation with Mr. Lucks about it. I saw some of the papers there about it and may have seen the note. I suppose Mr. Leopold & Max Lucks are in copartnership in the tobacco

business. I conversed with Mr. Leopold Lucks about it first,
386 and the second conversation they both may have been present. I think I had two or three conversations with Mr. Leopold Lucks about it, & I suppose now that Mr. Max Lucks was present. It occurs to me now that the first conversation I had with Leopold Lucks was at my dining-rooms, No. 516 8th street.

In the first conversation with Leopold Lucks, as near as I remember, he was at my place and said to me that he had a real-estate obligation or deed of trust note which he held as collateral against Mr. Tyler; whether he named Mr. Tyler at that time or not, I presume he did—that is, the claim was against Mr. Tyler; but his demand against Tyler was passed over, and that the col-atteral, according to its demands, was forfeited, and that he was going to sell it to somebody, and he was going to sell it—thought of disposing of it. He wanted to know of me if I would not like to buy it. I don't know as I can state all that was said, but, in short, I might
387 tell you the substance, which was I made particular enquiry into the case in all its phases. I said to him when he made the offer—I don't think we reached any conclusion in the first interview. Either the same day or the next, and I think it was the same day, I saw him again at his store and talked about it again, and he proposed to sell it to me at private sale, as the paper he held showed that he had the right to sell it at private sale, as I understood. The result of that conversation was I told him I did not care to purchase it at private sale, for the reason I feared that it might be considered in some way irregular and result in a litigation, which I did not wish to enjoy, and for that reason I told him if he would advertise it in some press I would bid on it. The interview did not proceed as far as to how much I should give for it, because I declined to purchase it at private sale. I gave no suggestion in detail as to the
388 manner of advertising. I told him if he would advertise it according to the agreement I would bid on it. I did not suggest to him in what paper to advertise it in. I have no recollection that I did. I don't think I did. It did not concern me. I understood this was a col-atteral to secure the payment of a note of Tyler's. I think he told me the amount was $1,500 and interest and cost. There might have been three interviews. I have told you of the two interviews, and I think I have told you the substance of all the interviews. I sought him when I went to their store, and he sought me when he came to my place. The first interview was at my place and the second and third, perhaps, at his place. I can't tell you what answer Mr. Lucks made to my suggestion to advertise the note on the first day, but my impression is he said he would consider it and thought he would adopt
389 that course. I don't think there was any definite understanding that he would advertise it. I don't think I knew definitely that it was going to be advertised until I saw the advertisement or he mentioned to me that he had advertised it. The first & second interviews occurred in one day, & the probability is the next interview took place the next day.

The following day Mr. Lucks was in my place, or I might have been in his place. I can only give the substance. I have nothing definite about it. Mr. Lucks and I in our relations have been very intimate for years. He rented one time his store from me. We meet and talk often, and I did not think it very remarkable that he should make such a proposition to me. I only talked with Mr. Lucks and his brother about the note. I talked with no one else about it. Mr. Fachts may have been there on one occasion. Indeed, I think he was there and explained about his serving the notices which I re-
390 garded as important. I knew the notices had been served. I think he explained that to me. That is my impression about it. In forming my judgment upon the value of the note was the ground on which the security was. When they told me where the ground was I knew it. I remember walking around the square once with a gentleman who talked about purchasing it. It was Dr. J. P. Richardson. I have property near there, and hence I am familiar with that part of the city. Dr. Richardson said he wanted to walk around it, as it was for sale, and it had been suggested to him to buy it. Mr. Lucks told me this note was secured by a deed of trust. I had no examination made of the records. I have known Mr. Lucks for 12 or 13 years, and he never has deceived me, and I have the utmost confidence in him. I think he told me he
391 had the abstract and might have shown it to me. I would take Lucks' word for any such thing or any amount as soon as I would take any lawyer's abstract. After the advertisement appeared my impression is Mr. Lucks came to me and told me it was advertised. He did not show it to me. I looked at the paper and saw it. I think it was the Daily Chronicle. I don't know that it appeared in any other of the city papers. I would not like to say it was not.

(It is here admitted that the advertisement appeared in the Morning Chronicle only for the first and only time on the morning of Nov. 29th.)

Witness, resuming, says: I think I went to the auctioneer's place alone. There were several bids besides my own. I don't think there were more than ten nor less than five bids. I did not know how many bidders were there. I don't think the auctioneer was a bidder.

392 The note was finally knocked down to me by the auctioneer for $2,000 and costs. The last bid I made was $2,000. Mr. Dowling had the note there and delivered it to me. I paid for it then and there. I paid the money for it, not by check. That is the way I remember it. I paid the $2,000 to him or to some one in his employ. I had $2,000 and more with me at the time. I can't tell how much more I had; I reckon as much as $100 and more on that occasion. I got the bulk of the $2,000 that day after breakfast. I received the $2,000 in Faehtz's office; the balance I had in my pocket. I received the $2,000 from Mr. Max Lucks. He was not indebted to me that amount at that time. I don't think

Mr. Max Lucks was indebted to me at that time in any amount. I got this $2,000 of Max Lucks to use it for that purpose, if I thought best to use it. The costs amounted to $46.37. I paid the
393 costs. I paid them in money. I did not endorse the note to the bank. My name is not on the note anywhere. I keep an account with the German-American bank. This note was entered on my bank book as being left for collection.

Cross-examined by Mr. WORTHINGTON:

It was stated by the auctioneer there was a certain amount of taxes against the property that had not been paid. It strikes me it was between $600 & $700, and, in addition to that, he said the title was a tax title. The abstract of title was there. I think it was made by Mr. Ward. In addition to that, special-improvement taxes were referred to as unpaid to a very considerable amount, and the amount stated by the auctioneer was considerable under the real amount. I did not intend to pay over $2,100 to $2,200. The auctioneer put the special-improvement tax at about $1,800. I believe that $2,000 is not near the half of taxes that will be against
394 it. I understand the special-improvement tax referred to in my answer is only on one of the four sides—Maryland avenue. I have recently learned that. The other sides are improved, but not assessed. This square, on an average, is ten feet *about* the grade. It seems to me that this ground, with clear title, would be worth not over ten cents. The $6,000 note belongs to me. Neither Mr. Max nor Leopold Lucks have any interest in it as a business transaction. I own it and control it and shall do with it as I will, except the money that Mr. Lucks put in it shall be paid to him when the amount is realized out of the note.

WALTER EVANS.

Sworn and subscribed to before me this 5th of Feb'y, 1876.

J. J. JOHNSON, *Exam'r.*

Adjourned till Wednesday, at 12 m.

J. J. JOHNSON, *Exam'r.*

395 Met and adjourned till the 14th, at 1 p. m.

J. J. JOHNSON, *Exam'r.*

Met pursuant to above, when ROBERT P. DODGE was recalled and says: The whole negotiation of both notes, $1,000 and $500 each, were made through Max Lucks by me. I think the money was paid to me by check in each case. They were both stock notes, paye- named in either of them. I don't remember by whom the checks are drawn, but I think they were payable at the German savings bank, about a week apart. The negotiation of the notes were about a week apart, although bearing the same date. When I made the negotiation of the $1,000 note I delivered to Max Lucks the $6,000 note as col-atteral.

ROB'T P. DODGE.

Sworn and subscribed to before me this 14th of Feb'y, 1876.
J. J. JOHNSON, *Exam'r.*

(A copy of said note of $6,000 is herewith filed and marked Exhibit I. I. I. No. 5.)

396 I. I. I. No. 5.

$6,000. WASHINGTON, D. C., *Jan. 10th, A. D.* 1873.

Three years after date I promise to pay to the order of James Lynch the sum of six thousand dollars, with interest at six per cent., for value received, payable at National Metropolitan bank.
Jan. 10–13, '76.

CHAS. A. McEWEN.

Endorsed: Jas. Lynch. Without recourse. William Tyler. Protest attached.

12490. C. A. McEwen. Jan. 10–13, '76.

	6,000
Ind.....	1,082 96
	7,082 96

397 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, John J. Johnson, examiner in chancery, do hereby certify that in pursuance of agreement the foregoing depositions were taken down and by me reduced to writing in the presence of and from the statement of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence and in the presence of the respective counsel who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

JOHN J. JOHNSON,
Examiner in Chancery.

398 *Cause Set for Hearing.*

WM. TYLER
vs. } No. 4724.
LUCHS *et al.*

MARCH 2, 1876.

Set this cause for hearing on pleadings and proofs.

W. D. CASSIN,
Sol. for Compl't.

Cause calandered as per order.

BY THE CLERK.

March 2, 1876.
18—129

Petition of G. M. Watkins to be Made Party Compl't.

Filed Mar. 21, 1876. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
vs.
LEOPOLD LUCHS *et al.* } No. 4724. Equity.

To the honorable the justice of said court, holding an equity court, the petition of Greenbury M. Watkins respectively shows:

1st. That he is a citizen of the United States and resident
399 of the State of Maryland and in his own right and behalf files this petition.

2d. That he is and was the *bona fide* holder and owner of three certain promissory notes bearing date July 17th, 1875, each for five hundred dollars ($500.00), drawn by the said William Tyler (complainant in the above-entitled suit), payable to the order of Grafton Tyler and by him endorsed, respectively, at six, twelve, and eighteen months, with interest, and that said notes have not been paid in whole or in part, nor have any of them.

3d. That after the institution of the above-entitled suit, to wit, on 16th day of February, A. D. 1876, in order to secure the payment of said three notes and as collateral security for the payment thereof, the said William Tyler, for value received, did assign and transfer unto petitioner (by his certain paper-writing of that date) an in-
400 terest in the promissory note of Charles McEuen, mentioned in complainant's bill (being the note of said McEuen for $6,000.00, secured by deed of trust on square 936)—that is to say, an interest therein to the extent of eighteen hundred dollars for the purpose aforesaid.

Wherefore, the premises considered, your petitioner humbly prays that an order may be passed herein allowing him to intervene in said cause and to become a complainant therein, and that a decree may be passed by your honor, as prayed by the complainant, reserving and protecting the rights of petitioner arising out of said assignment and setting apart an interest in said note or the proceeds of sale thereof in favor of petitioner to the extent of eighteen hundred dollars or so much thereof as will pay and satisfy said first-mentioned three notes and interest, and for such other and further relief as the nature of the case may require and to your honor
401 may seem meet; and he will ever pray, &c.

BRADLEY & DUVALL,
Sol'ts for Watkins.

A. Thomas Bradley, agent for petitioner, being first duly sworn, deposes and says: I have read the foregoing petition and know its contents and the facts therein stated are true.

A. THOS. BRADLEY,
Agent for G. M. Watkins.

Subscribed & sworn to before me this 21st of March, 1876.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

402 *Petition of P. A. Darneille for Leave to Intervene.*

Filed Apr. 1, 1876. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
v.
LEOPOLD LUCHS *et al.*

To the hon. justice of said court, sitting in equity:

The petition of Phillip A. Darnielle respectfully shows as follows:

1. He is a citizen of the United States and of said District.

2. He petitions in his own right.

3. He is the *bona fide* holder for value of said plaintiff's note for $1,000.00, dated Washington, D. C., October 23rd, A. D. 1875, and payable in sixty (60) days after date to the order of said Greenbury M. Watkins, and by him (said Watkins) endorsed to petitioner without recourse.

4. That said note was at its date and when petitioner acquired the same and is now secured by collaterals, amongst which was and is a certain promissory note drawn by one Charles A. McEwen to

403 the order of James Lynch for six thousand (6,000) dollars, dated Washington, D. C., —— —, A. D. 1875, payable in — after date, with interest at the rate of 6 per cent. per annum, and is the same note for $6,000 described in the original bill in this cause.

And (the) petitioner, who now submits fully to the discretion and decrees of this honorable court, prays:

1. That he may be allowed to intervene as a party defendant in this cause upon contributing his proportion of the costs and expenses of the litigation.

2. And that he may have such other and further relief as the nature of his case may require, &c., &c.

I, Phillip A. Darnielle, on oath say I have heard read the foregoing petition and know the contents, and that the facts therein stated of my personal knowledge are true.

P. A. DARNEILLE.

Subscribed & sworn to before me this 1st day of April, A. D. 1876.

[SEAL.] JAMES NICH'S CALLAN,
Notary Public.

404 *Reference to Special Auditor to Ascertain Liens.*

Filed Jul- 16, 1877. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Term.

WILLIAM TYLER
v.
MAX LUCKS & Others. } No. 4724, Eq. Dock. 15.

In this cause, by consent of the parties thereto, it is by the court, this 16th day of July, 1877, ordered that the issue be, and is hereby, referred to James G. Payne, who is hereby appointed to audit the same, to ascertain and report to this court what liens there are on the note and real property described in said bill and proceedings; also the amount of cash liens, including the interest due thereon, and the name of the person or persons by whom the said lien is held and the priority of each of said liens respectively as to the right of payment, and the said special auditor shall use as evidence the exhibits and depositions already on file in said cause, and take such further proofs as may be produced before him by any
405 of the parties in said cause, and make his report herein on or before 1st Sept. next.

BY THE COURT.

JOS. H. BRADLEY,
Sol'r for Watkins et al.
WM. M. CASSIN,
Sol'r for Tyler.
L. G. HINE, T.,
For Bodisco, Assignee — Darnielle.
A. S. WORTHINGTON,
For Def't Evans.

406 *Report of Special Auditor.*

Filed Oct. 6, 1877. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
v.
MAX LUCHS *et al.* } No. 4724, Eq. Doc. 15.

This cause is referred to me to ascertain and report to the court what liens there are on the note and collaterals, the property described in the bill of complaint and proceedings, with the amount of each lien and interest, the name of the holder, and the priority as to right of payment.

By the terms of the order the depositions already taken in the cause were made proofs in this audit.

By agreement of counsel the deposition of P. A. Darneille, taken in equity cause No. 4761, and all of the depositions taken in that cause touching the genuineness of a certain note of Mrs.
407 Amelia Irwin, for $3,000, dated August 6, 1875, and on file in cause No. 4761, attached to the deposition of Watkins Addison, Jr., and marked Exhibit J. J. J. *b*, are to be considered as testimony in this proceeding, and either party had leave to submit to the special auditor copies of such portions of the last-mentioned deposition as they might desire to accompany his report.

After due notice to the several counsel in the cause I proceeded with the execution of the reference, and I return herewith the depositions of witnesses produced before me and the several exhibits filed. Among the depositions accompanying this report will be found statements of the several agreements before referred to and extracts from the depositions in No. 4761 furnished by the counsel for P. A. Darneille.

From the pleadings in this cause and all of the proofs I gather the following history of the facts:

408 In the month of September, 1875, the complainant executed and delivered to the defendants Luchs & Brother or Leopold Luchs his two promissory notes, dated Sept. 17th, 1875, for 1,000 and 500 respectively, payable in 60 days, with interest at the rate of ten per cent. per annum until paid, and as collateral security for the said notes he deposited with the said Luchs a certain note of Charles A. McEwen for $6,000, payable in three years from the 10th day of January, 1873, to the order of one James Lynch, and endorsed by him and secured by a deed of trust of square No. 936, in the city of Washington.

On the 23rd of October, 1875, the complainant, through the firm of Dodge and Darnielle, broker- (of which firm the defendant Darnielle was a partner), borrowed from Greenbury M. Watkins the sum of one thousand dollars, giving for the same his note at
409 60 days, with interest at 10 per cent. per annum until paid, and reciting, in the usual terms of a stock note, that the maker had deposited with said G. M. Watkins, as collateral security, a certain note for $3,000, dated August 6, 1875, and drawn by Amelia H. Irwin to his (Tyler's) order and owned by him, secured by deed of trust and subject only to a prior trust of $5,000; also a note, drawn by C. McEwen to J. Lynch, also owned by him (Tyler) and held by Luchs & Bro., for $1,500; also a note for $1,000, drawn by G. Tyler to his (Wm. Tyler's) order, and authorizing the holder of the said stock note, upon default, to sell the said collaterals or any part thereof. This note is herewith submitted as a part of this report and is marked Exhibit (to the deposition) R. P. D. 1.

The $1,000 note of Grafton Tyler described in said stock note is also returned herewith, marked Exhibit R. P. D. 2.

410 On the 16th of February, 1876, the complainant, Wm. Tyler, assigned to G. M. Watkins the sum of $1,800 of the $6,000 McEwen note as collateral security for the payment of three promissory notes, bearing date the 17th of July, 1875, for $500 each. This assignment is herewith returned, marked Exhibit Watkins, A,

and the three notes therein referred to are also returned, marked Exhibit- Watkins, B, C, and D.

On the 1st of August, 1876, the complainant Tyler assigned to William D. Cassin all his (Tyler's) right, title, and interest in the $6,000 McEwen note and the $3,000 Amelia H. Irwin note. This assignment is submitted herewith and marked Exhibit W. D. C.

About the latter part of December, 1875, or the first of January, 1876, Darnielle purchased back from Watkins the $1,000 stock note of Tyler, dated October 23rd, 1875, giving for the same, in money or other valuables, the amount of the note and receiving with
411 it the collaterals which had been deposited with Watkins. He subsequently, to wit, about the 19th of January, 1876, sold one of these collaterals, viz., the note of Mrs. Amelia H. Irwin for $3,000, for par on its face value.

The $6,000 McEwen note was never in the possession of Watkins or Darnielle unless, as is claimed, they had constructive possession of or title to it by reason of the recital in the $1,000 stock note.

The claim of Luchs upon the McEwen note as security for the amount of the two notes of William Tyler, dated September 17, 1875, and amounting to $1,500, with interest, is beyond dispute the first lien upon that (the McEwen note).

The next claim which I am called to pass upon grows out of the $1,000 stock note, dated October 23, 1875, made by Tyler to G. M. Watkins and afterwards repurchased from Watkins by Darnielle.

412 Darnielle filed his petition in this cause on the 1st of April, 1876, claiming to be the holder of the said note and the collaterals therein described and praying leave to intervene as a party defendant. In the proceedings and proofs before me it appears that about the 3rd of May, 1876, this note was transferred to Constantine De Bodisco, and by consent of parties De Bodisco is substituted in this proceeding in place of Darnielle.

To the present claim upon this note, so far, at least, as it seeks a lien upon the $6,000 McEwen note, it is replied that Mr. Darnielle received satisfaction of this note on the 19th of January, 1876, by the sale of the $3,000 note of Mrs. Amelia H. Irwin for its face or par value, and that such satisfaction released all of the other collaterals covered by the $1,000 stock note; that De Bodisco acquired the $1,000 stock note after its maturity and pending this suit
413 and stand- in no better relation than his assignor, Darnielle.

To this it is answered by the counsel representing this claim that the $3,000 note of Mrs. Irwin, so sold by Darnielle, is claimed by her to be a forgery, and that Darnielle will or may have to redeem that note from the party to whom he sold it; that the Grafton Tyler note of $1,000, described in the said stock note as one of the collaterals thereto, is a forgery, and therefore worthless, and that the only genuine security remaining for this stock note is the interest that remained in Tyler in the $6,000 McEwen note after the payment of the claim of Luchs & Bro.

The testimony of Grafton Tyler, before me, establishes the fact

that the $1,000 note, purporting to be signed by him and which is described in the $1,000 stock note, is a forgery.

The proofs as to the genuineness or forgery of the $3,000
414 Mrs. Irwin note are found in the evidence taken in cause No. 4761, and consists of the deposition of Mrs. Irwin herself, that of William Bryan, a merchant, and that of Mr. Herbert, one of Mrs. Irwin's trustees, in support of the claim of forgery.

Mrs. Irwin swears that the signature is not hers and does not look like hers or like anything she has ever written.

She also testifies in the same deposition that she cannot swear that the signature is not hers; that she does not think she wrote it; that she never executed any $3,000 note. Her testimony is uncertain and contradictory, and in several matters other than this note she is as fully contradicted as to throw great doubt around all of her statements.

Mr. Bryan testifies that the signature to the note differs from the other signatures of Mrs. Irwin which he has seen in the formation of the letters "n" and I, and he does not think it to be her signature.

415 Mr. Herbert testifies that this name does not look to him like the signature of Mrs. Irwin, because in nearly all of the signatures he has had from her she signs her name A. H., and this does not correspond with his recollection of her signature generally.

Some stress is laid by most of the witnesses upon the fact that the signature to this note is Amelia H. Irwin, while, as they assert, she always or nearly always signs her name A. H. Irwin, but the depositions and her admitted signature to exhibits in cause No. 4761 show that she frequently signs her first name in full.

This testimony is not sufficient, in my judgment, to establish the forgery charged as to this note. There is a want of similarity between this signature and other admittedly genuine signatures of hers that might form an item of proof against this paper, but neither this circumstance nor the testimony to which I have
416 referred nor both are sufficient to warrant the conclusion that the paper is a forgery and that Mr. Darnielle will be compelled to redeem it from the party to whom he sold it, and that therefore we must consider that sale as naught and the $1,000 stock note now held by De Bodisco as unsatisfied.

Mr. Darnielle while the holder of the $1,000 stock note and its collateral securities disposes of one of these securities for its par value, which is at least $3,000, a sum far more than sufficient to satisfy the original or stock note. *Prima facie* the stock note is satisfied by this operation, and to meet and overcome this *prima facie* case the burden of proof is upon those who attack it. In this proceeding at least the alleged forgery of the Irwin note should be established by clear and conclusive proof. Such proof is not furnished, as I think. Mr. Darnielle has not been called upon to redeem the note and has not done so.

417 There is another point which appears in this proceeding and which affects the lien claimed for this stock note upon

the McEwen note—that is, does the recital in the stock note convey to its holder any title to or interest in the McEwen note? The recital is "that the maker of the note has deposited with the payee the securities named, *which* in fact there was no deposit of the McEwen note and could have been none. This point was not discussed by counsel, and as I disposed of the claim of this stock note I will only suggest the question.

The next lien claimed is under the assignment by Wm. Tyler, on the 16th day of February, 1876, of $1,800 of the McEwen note to G. M. Watkins to secure the payment of three notes, amounting to $1,500, and interest from July 17, 1875.

418 The next lien is the assignment by Wm. Tyler, on the first of August, 1876, of all his title and interest in the McEwen note and the Irwin note to Wm. D. Cassin.

Schedule A with the report shows the several liens upon the McEwen note as I have passed upon them, with their amount and security.

JAS. G. PAYNE.
Spec. Auditor.

Special auditor's fee, $40.

419 In the Supreme Court of the District of Columbia.

WILLIAM TYLER
v.
MAX LUCHS *et al.*

Depositions Taken Before Jas. G. Payne, Special Auditor.

JULY 26TH, 1877.

Present: Jos. H. Bradley, Wm. D. Cassin, L. G. Hine, Esq., of counsel, and R. P. Dodge.

Messr-. Bradley & Cassin appear for the estate of G. W. Watkins and Cassin for Tyler.

Counsel for Watkins' estate submit assignment of Wm. Tyler, Febr. 16, 1876, to G. N. Watkins, marked Exhibit Watkins A, and they resist the claim of Philip A. Darnielle, because they say the said claim is founded on a note for $1,000, which note came to the possession of the said Darnielle under the following circumstances:

420 Said Wm. Tyler, complainant in this cause, applied to the firm of Dodge & Darnielle to raise the sum of $1,000; that firm having in their possession money of the said G. W. Watkins to be loaned, I sent to the said Tyler $1,000 of said Watkins' money, and as collateral security therefore gave to said Watkins the assignment marked Exhibit Watkins A, and also a note for $3,000, made by Mrs. Irwin (Amelia H), secured by a deed of trust on real estate in the city of Washington, and also a note for $1,000 purporting to be executed by Grafton Tyler. Watkins becoming dissatisfied with the investment, Mr. Philip A. Darnielle returned to Mr. Watkins the $1,000 and took back from him the said $1,000

note executed by Wm. Tyler, together with the collaterals above mentioned. He then sold the said note of $3,000 of Mrs. Irwin for its face value and received satisfaction therefore. We there-
421 fore claim that by the sale of the said notes the note given by Wm. Tyler for $1,000 was fully satisfied, and he can have no claim therefore on the McEwen notes in these proceedings.

ROBERT P. DODGE, a witness called by Messrs. Bradley & Cassin, being duly sworn, deposeth as follows:

I am a citizen of this District and was a member of the firm of Dodge & Darnielle.

Q. State, if you please, in your manner, whether you recollect and all that you recollect of the transaction by your firm in which your firm lent to Mr. Tyler $1,000 for G. M. Watkins and took from Mr. Tyler his note for $1,000, now in controversy, together with certain collaterals. State fully as near as you can recollect.

A. I think it was about the latter part of October, 1875, that Mr. Wm. Tyler applied for a $1,000 loan at our office, Mr. Darnielle being absent. He agreed to give and did give for said loan
422 of $1,000 as collateral security, which is mentioned in his stock note of 60 days, the note of Charles McEwen of $6,000, on which he had already drawn $1,500 from Max Luchs; also a note of $3,000 of Mrs. Amelia Irwin, secured by a deed of trust on property on which $5,000 had previously been drawn.

The witness here identifies the note of Mrs. Irwin, filed in equity cause 4761 in this court, eq. doc. 15, Trimbles *v.* Irwin, and to be found attached on page 3 to the deposition of Watkins Addison, taken before J. J. Johnson, Esq., as the note for $3,000 just referred to by him.

He also gave as collateral the $1,000 60-days note of his father, Grafton Tyler. The note and all the securities were handed over to Greenbury Watkins, who furnished the money for the loan. Some time afterward, I remember, Mr. Darnielle got the note and all the papers back from Mr. Watkins, for which, I believe, he gave him the $1,000 and accrued interest—that is, I believe
423 so. I do not recollect distinctly about the interest. It was a private transaction of Mr. Darnielle's, and I do not recollect particularly about it.

Cross-examined by Mr. HINE:

Q. Was the $1,000 note you have just spoken of as having been purchased by Darnielle from Watkins the same $1,000 note that Watkins had before that purchaser claimed was secured in its payment by this $6,000 McEwen collateral note deposited with Luchs?

A. I so understood it.

Q. At the *term* of the purchase by Darnielle of the Tyler $1,000 note just referred —, was there anything said between Watkins and Darnielle?

—. ——.

ROB'T P. DODGE.

Messrs. Bradley & Cassin offer the deposition of Philip A.
424 Darnielle taken in the cause of Trimble *v.* Irwin, No. 4761, equity doc. 15, in this court. (Mr. Hine objects, because it purports to be a deposition in another case and because he is within reach of a subpœna.)

Mr. Bradley submits a claim in behalf of Mr. W. D. Cassin to all the surplus of the proceeds of the $6,000 McEwen note and the $3,000 Irwin note after the assignment of Luebs and Watkins and offer- an assignment of Wm. Tyler, marked Exhibit W. D. C.

Hearing adjourned to Saturday, the 28th instant, at 12 o'clock.

SATURDAY, *July 28th*, 1877.

Present: Messrs. Bradley, Cassin, and Hine.

ROBERT P. DODGE, recalled by Mr. Hine.

Note marked Exhibit R. P. D. shown to witness, who says: This is the original stock note drawn by me and signed by Wm.
425 Tyler, payable to Greenbury M. Watkins, dated October 23, 1875, for the sum of $1,000, in which the securities mentioned by me in my former deposition in this audit are named. This note is endorsed by G. M. Watkins, "without recourse to me," the whole endorsement being in his handwriting. Mr. Watkins, after the failure of Mr. Tyler, became dissatisfied with the loan. Mr. Darnielle agreed to take it from him, with all the securities, for a certain amount, including some railroad tickets. Mr. Watkins was not satisfied until I gave him my due bill for sixty dollars to make up the amount. This due bill Mr. Darnielle afterwards paid. (Note of Grafton Tyler, October 20th, 1875, for $1,000, shown to witness.) This is one of the notes mentioned in the stock note. This note is submitted by Mr. Hine and is marked Exhibit R. P. D. 2.

It is here admitted by the counsel here present—Mr. Hine,
426 Messrs. Bradley and Cassin—that the signature of Grafton Tyler to the $1,000 note above referred to is a forgery, reserving all questions as to the materiality or admissibility of that fact as evidence in this proceeding.

Witness examined by Mr. BRADLEY:

Paper marked Exhibit Watkins A shown to witness, who says: I remember the notes mentioned in this paper as having been sold by Mr. Darnielle to Mr. Watkins. I think the transaction was made about August, 1875, and some months before the stock-note transaction.

By Mr. HINE:

These notes, when sold to Watkins in August, 1875, were personal notes and without security excepting the endorsement of Grafton Tyler.

ROB'T P. DODGE.

427 It is stated by Mr. Hine that Constantine de Bodisco is now the owner of the stock note (Exhibit R. P. D. 1), which

is admitted by Messrs. Bradley & Cassin, and it is agreed that De Bodisco, Esq., be substituted in this proceeding in the stead of Mr. Darnielle.

It is agreed by the counsel present that all of the depositions taken in the cause of Trimble *v.* Irwin, No. 4761, equity docket 15, touching the genuineness of the note of Mrs. Amelia Irwin for $3,000 (referred to in the stock note) may be considered as testimony in this proceeding, and either side may copy and submit to the special auditor such portion of said deposition as they desire — be returned with the report of the auditor as evidence taken before him.

Further hearing adjourned subject to notice.

428 AUGUST 18, 1877.

Met pursuant to notice.

Present: Messrs. Bradley and Hine.

JOSEPH BARTON, a witness produced by Mr. Bradley, being duly sworn, deposes as follows:

Q. Were you the agent in the spring of 1876 of the Brodisco estate or of Mr. Constantine de Brodisco in any transaction with Mr. Philip A. Darnielle touching the interest of that estate?

Mr. Hine objects to the question as incompetent.

A. Yes, sir.

Q. State, if you please, as accurately as you can, the date of that transaction, so far as it relates to a transfer of a note of $1,000, made by William Tyler, if there was any such transaction by which such note was transferred to the Bodisco estate.

429 A. As near as I can get it, it was from the 3rd to the 6th of May, 1876.

Q. Was that note of William Tyler delivered to you, or where was it put?

A. It never was delivered to me. I never saw it until this morning. It was a verbal order given by Mr. Darnielle to Mr. Hine, that when the proceeds were collected to turn them over to me as agent for the Bodisco estate. I was under the impression that it was Grafton Tyler's note, but I don't recollect that Mr. Darnielle said anything about that.

JOSEPH BARTON.

Mr. Bradley submits three notes made by William Tyler, dated the 17th of July, 1875, each for $500, and payable to the order of Grafton Tyler in 6, 12, and 18 months respectively. Said notes are all marked Watkins, B, C, and D, and it is agreed that the signature of William Tyler to these notes is genuine, and that the en-

430 dorsement of Grafton Tyler is a forgery.

It is agreed that the depositions of Philip A. Darnielle in equity cause No. 4761 may be used and referred to as evidence in this matter.

Mr. Hine submits extracts from depositions taken in equity cause No. 4761 under the agreement contained in page 8 of the depositions, and the same is marked for reference Exhibit E.

The further hearing continued subject to notice.

AUGUST 22, 1877.

Hearing resumed, pursuant to notice, at 12 o'clock m.

Dr. GRAFTON TYLER, a witness produced on behalf of P. A. Darnielle, sworn, deposes as follows:

431 The note marked Exhibit R. P. D. 2 shown to witness, and he is asked whether the signature to this note is his genuine signature or not.

Answer. This is not my signature. It is impressed upon my memory by the fact that on the 16th of October, 1875, I discovered that something was wrong, and after that time I signed no notes and had no business transactions whatever with William Tyler.

Mr. Bradley now states that at the last hearing he inadvertently admitted that the endorsement upon Exhibit- Watkins, B, C, and D, were forgeries and he now presents the same exhibits to the witness and asks him whether the said endorsements are the genuine signatures of him, the witness.

Answer. The endorsements of Grafton Tyler on each of these notes is my signature and the waiver of protest on each of the said notes and the signature thereto is my handwriting.

GRAFTON TYLER.

432 SCHEDULE A.

Liens upon the Note of Chas. A. McEwen of $6,000 *and Secured by Deed of Trust of Square* 936.

1. Notes of Wm. Tyler to Luchs, dated Sept. 17, 1875		1,500	
Interest, at 10 per cent. per annum, to November 1, 1877		318	
			1,818 00
2. Assignment to G. M. Watkins to secure notes as follows:			
July 17, 1875, at 6 months	500		
Interest to maturity	12 50		
Interest to Nov. 1, 1877	53 60		
		566 10	
July 17, 1875, at 12 months	500		
Interest to maturity	37 50		
Interest to Nov. 1, 1877	38 60		
		576 10	
July 17, 1875, at 18 months	500		
Interest to maturity	62 50		
Interest to Nov. 1, 1877	23 60		
		586 10	
			1,728 30

(In the lifetime of these notes they have interest at 10 per cent., and interest is receipted on each note to Oct. 17, 1875.)

433

3. To Wm. D. Cassin by assignment of August 1, 1876, the remainder of the McEwen note.

JAS. G. PAYNE,
Special Auditor.

EXHIBIT R. P. D. 1.

$1,000. WASHINGTON CITY, D. C., *October 23d*, 1875.

Sixty days after date I promise to pay to Greenbury M. Watkins or order one thousand dollars without defalcation, for value received, with interest from date until paid, at the rate of ten per cent. per annum, payable at maturity, having deposited with said E. M. Watkins as collateral security a certain note for $3,000, dated August 6th, 1875, and drawn by Amelia H. Irwin to my order and owned by me, secured by deed of trust and subject only to prior trust of $5,000; also a note of $6,000, drawn by C. McEwen to J.
434 Lynch, also owned by me & now held by Luchs & Bro., for $1,500; also a note for $6,000, drawn by G. Tyler to my order, and hereby authorize the holder thereof, his heirs or assigns, to sell the same or any part thereof at public or private sale on the non-performance of this promise, —— notice.

WILLIAM TYLER.

EXHIBIT R. P. D. 2.

$1,000. WASHINGTON, D. C., *Oct. 20th*, 1875.

Sixty days after date I promise to pay to the order of William Tyler one thousand dollars at H. E. Offley & Co.'s bank, with interest at eight per cent. per annum, value received.

No. ——. Due ——.

GRAFTON TYLER.

Endorsed: William Tyler.

435 WATKINS—A.

For value received I do hereby assign and transfer unto G. M. Watkins the sum of eighteen hundred dollars of the note of Charles McEwen, $6,000, secured by deed of trust on square No. 936, as collateral security for the payment of three promissory notes, bearing dates on the 17th day of July, 1875, for $500 each, and payable, with interest, six, twelve, and eighteen months after date, to the order of Grafton Tyler.

Feb. 16, 1876.

WILLIAM TYLER.

WATKINS—B.

$500. WASHINGTON, D. C., *July* 17*th*, 1875.

Real-estate office of Wm. Tyler, 715 15th St., broker.

Six months after date I promise to pay to the order of Grafton Tyler five hundred $\frac{00}{100}$ dollars at E. H. Offley's bank, with interest at ten per cent. per annum, payable quarterly, value received.

No. ——. Due ——.

WILLIAM TYLER.

436 WATKINS—C.

$500. WASHINGTON, D. C., *July* 17*th*, 1875.

Real-estate office of Wm. Tyler, 715 15th St., broker.

Twelve months after date I promise to pay to the order of Grafton Tyler five hundred $\frac{00}{100}$ dollars at E. H. Offley's bank, with interest at ten per cent. per annum, payable quarterly, value received.

No. ——. Due ——.

WILLIAM TYLER.

WATKINS—D.

$500. WASHINGTON, D. C., *July* 17*th*, 1875.

Real-estate office of Wm. Tyler, 715 15th St., broker.

Eighteen months after date I promise to pay to the order of Grafton Tyler five hundred dollars at E. H. Offley's bank, with interest at ten per cent. per annum, payable semi-annually, value received.

No. ——. Due ——.

WILLIAM TYLER.

437 EXHIBIT W. D. C.

For value received I hereby assign, transfer, and set over unto William D. Cassin all my right, title, interest, claim, and demand in and to a certain promissory note of McEwen for the sum of $6,000, which is now in litigation in the suit of Tyler *v.* Lucks *et al.*, in the supreme court of the District of Columbia, No. —, and also in and to a certain promissory note of Amelia H. Irwin for the sum of $3,000, which was in the hands of Greenbury Watkins as collateral, and by him turned over to Philip A. Darnielle, and by said Darnielle to one Coleman, and which is referred to and spoken of in the suits of Trimble *vs.* Irwin, in the supreme court of the District of Columbia, No. —.

Witness my hand and seal this first day of August, A. D. 1876.

WILLIAM TYLER. [SEAL.]

Witness:

—— ——.

438 EXHIBIT E.

In the Supreme Court of the District of Columbia.

TRIMBLE
vs.
IRWIN. } No. 4761, Doc. 15.

Copy of Testimony Respecting the $3,000.00 Note.

Page 45: From testimony of Amelia H. Irwin.

Q. How is it that you are so positive that the signature to J. J. J., B, is not your signature?
A. Because it is not my handwriting.
Is not the signature to that note very much like yours?
Not at all. It is nothing like mine.
Is not the general structure of that signature like yours usually is?
It does not look like anything that I have ever written.

Page 52: From testimony of William Bryan.

Examine the signature, Amelia H. Irwin, to Exhibit J. J. J.,
439 B, filed in this cause, and say whether or not, in your opinion, that that is the signature or writing of Mrs. Amelia H. Irwin.

Objected to because it does not appear that the witness is an expert or qualified to testify.

I think not.
If you can, I wish you to point out or give any reason why it is not.
The letter "w" is not made in the manner in which I have seen her.
How is the general character and style compared with hers?
I admit it is an imitation, but I would not take it to be hers. The "I" in Irwin does not look — hers.
How did Mrs. Irwin universally sign her name?
Sometimes Amelia and sometimes "A. H."

Page 65: From testimony of Arthur Herbert.

Am engaged in the banking business. I am acquainted with Mrs. Irwin and have known her all my life. I am one of her trus-
440 tees. I consider myself to be acquainted with her handwriting. I have had her to sign vouchers for cash paid her. I have had correspondence with her at times.
I should think from my acquaintance with her handwriting I would know the genuine signature.
66: What is your opinion with regard to the genuineness to the Exhibit J. J. J., B?
It does not look like her signature to me.

Do you think it is her signature?
Well, I say it does not look like her signature to me.
Why?
In nearly all the signatures that I have had from her she signs her name A. H., and that does not accord with my recollection of her signature generally.

441 Filed Oct. 13, 1877. R. J. Meigs.

In the Supreme Court of the District of Columbia.

TYLER *et al.* *vs.* LUCHS *et al.* } No. 4724. Eq.

Exceptions to Report of Special Auditor James G. Payne.

Exceptions taken by Constantine de Bodisco, assignee of Phillip A. Darnielle, one of the defendants in this cause, to the report and Schedule "A" thereunto annexed of James G. Payne, special auditor, filed herein.

First exception. This exceptant excepts to so much of said report as finds that a certain promissory note for $3,000, dated August 6th, A. D. 1876, and purporting to have been assigned by Amelia H. Irwin (in the proceedings mentioned), to be genuine, whereas said auditor should have found, from the weight of evidence before him, that said note was a forgery.

442 Second exception. *To* that said special auditor finds that a certain promissory note for $1,000, dated the 23d day of October, 1875, drawn by Grafton Tyler to the order of William Tyler, in the proceedings mentioned (of which this exceptant is the holder), has been paid and satisfied, whereas the said auditor should have found from the evidence that the said note has not been paid, — *un*wholly or partially, and that the same is still unsatisfied.

Third exception. For that said special auditor should have in and by his said report have found that there was an equitable assignment of so much of said $6,000.00 McEwen note as was necessary to pay this exceptant's $1,000 note aforesaid and interest.

Wherefore this exceptant prays that said report be rejected & recommitted to said auditor, with instructions to report on the
443 subject referred — in accordance with these exceptions.

CONSTANTINE DE BODISCO,
Assignee of P. A. Darnielle,
By L. G. HINE, *His Solicitor.*

444 *Exceptions to Special Auditor's Report Held until Final Hearing.*

Filed Dec. 21, 1877. R. J. Meigs.

In the Supreme Court of the District of Columbia, December 21st, 1877.

WILLIAM TYLER
vs.
LUCHS *et al.* } Equity. No. 4724.

The exceptions to the report of the special auditor coming on to oe heard and having been argued by counsel and duly considered by the court, and it appearing that the reference to the auditor was premature, it is, this 21st day of December, 1877, ordered that the report of said auditor be retained by the court on said exceptions until the final hearing of this cause on the case made by the pleadings and evidence in the cause.

BY THE COURT.

445 *Order for Sale of Note and Distribution of Proceeds.*

Filed Nov. 18, 1878. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

TYLER
vs.
LUCHS *et al.* } Equity. No. 4724, Doc. 15.

This cause coming on to be heard upon bill, answer, and proofs, it is by the court, this 18th day of November, A. D. 1878, ordered, adjudged, and decreed that the restraining order granted in above cause on the 4th day of January, A. D. 1876, be, and the same is hereby, made perpetual. It is further ordered, adjudged, and decreed that the exceptions filed to the report of Special Auditor James G. Payne, filed on the 6th day of October, A. D. 1877, be, and the same are hereby, overruled, and said report is hereby ratified and confirmed.

It is further ordered, adjudged, and decreed that Andrew B. Duvall and John C. Heald be, and they are hereby, appointed trustees to make sale of the $6,000 McEwen note in said proceed-
446 ings mentioned, and out of the proceeds arising from such sale, first, to pay all the proper expenses attending said sale, including a commission of three per cent. upon the gross amount of said sale as a compensation to said trustees for the execution of the said trust hereby reposed in them.

Secondly, to pay to the defendant Leopold Luchs the sum of $1,500, with interest at 10 per cent. until paid, from Sept. 17th, 1875.

Third. Pay to the executors of Greenbury M. Watkins the sum

of fifteen hundred dollars, with interest on $500 at 10 per cent. for 6 months from July 17th, 1875, and at 6 per cent. thereafter until paid; on $500 at 10 per cent. for 12 months from July 17th, 1875, and at 6 per cent. thereafter until paid, and on $500 at 10 per cent. for 18 months from July 17th, 1875, and at 6 per cent. thereafter until paid.

447 Fourth. Pay all the balance from proceeds of sale of said note, after the payment of the expenses, claim- of Leopold Luchs and executors of Greenbury M. Watkins, to William D. Cassin.

That the said trustees, jointly and severally, before entering upon said duties of such trustees, shall file in the clerk's office of this court a bond to the United States, executed by themselves, with a *a* surety or sureties, to be approved by this court, in the penalty of ten thousand dollars, $10,000, conditioned for the faithful performance of the trust reposed in them by this decree or which may be reposed in them by any further decree or order in the premises. They shall then proceed to make sale of said $6,000 note, having first given at least ten days' previous notice, inserted at least three times in some newspaper printed in the District of Columbia, of the time, place, manner, and terms of sale, which terms of sale

448 shall be all cash at the time of sale.

And as soon as may be convenient after such sale the said trustees shall return to this court a full and particular account of the same, with an affidavit of the truth thereof and of the fairness of such sale, and the distribution of the proceeds of same annexed.

By the court:

A. WYLIE.

449 *Trustees' Bond.*

Filed Nov. 18, 1878. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
v.
LEOPOLD LUCHS *et al.* } No. 4724, Eq. Doc. 15.

Know all men by these presents that we, Andrew B. Duvall, John C. Heald, Benjamin H. Duvall, and Augustus S. Worthington, of the District of Columbia, are held and firmly bound to the United States of America in the just and full sum of ten thousand dollars ($10,000.00); to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Whereas by a decree of said supreme court passed in the above-entitled cause on the 18th day of November, 1878, the above-bounden Andrew B. Duvall and John C. Heald were appointed trustees to sell a certain promissory note in said proceedings described:

450 Now, therefore, the condition of this obligation is such that if the said Andrew B. Duvall and John C. Heald shall faithfully perform their duty as trustees without injury to any person interested in said promissory note, then the above obligation to be void; otherwise in full force and virtue in law.

Sealed with our seals and signed by us at Washington, D. C., this 18th day of November, 1878.

ANDREW B. DUVALL. [SEAL.]
JOHN C. HEALD. [SEAL.]
BENJAMIN H. DUVALL. [SEAL.]
AUGUSTUS S. WORTHINGTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. THOS. BRADLEY,
As to A. B. D.
J. A. DUVALL,
As to B. H. D.
As to John C. Heald & Augustus S. Worthington,
N. C. HARPER.

Approved Nov. 19, 1878.
MACARTHUR.

451 *Report of Trustees.*

Filed Dec. 21, 1878. R. J. Meigs.

In the Supreme Court of the District of Columbia.

WM. TYLER *vs.* LEOPOLD LUCHS *et al.* } Equity. No. 4727.

To the honorable the justices of said court, holding an equity court:

Andrew B. Duvall and John C. Heald, trustees in this cause, respectfully show and report unto your honors:

1. That they duly qualified as such trustees and filed their bond, with surety, as required by the decree of November 10th, 1878, appointing them trustees, and thereupon, on the 2d day of December, 1878, they proceeded to execute the said decree by advertising for sale at public auction the note in the proceedings mentioned, the said advertisement being inserted in the "Evening Star," a newspaper printed and published in the city of Washington, the said sale to take place at the office of B. H. Warner, auctioneer, No. 916
452 F St., in said city, on Thursday, Dec. 12th, 1878, at 4 o'cl'k.

2. On the said Dec. 12th, at the said hour, they attended the place designated in said advertisement for the purpose of making the sale of said note. There were present besides your trustees and the auctioneer the defendants Luchs and Cassin and one other person, who stated he had no intention of bidding or purchasing; whereupon your trustees postponed the sale until Tuesday, Dec. 17th, 1878, at the same hour and place, and advertised the said

postponement in the said "Evening Star" newspaper. A certified copy of the original advertisement and postponement, together with the bill for the cost thereof, is appended hereto.

3. On Tuesday, Dec. 17th, 1878, at the time and place designated in the advertisement of the postponement, they again attended for the purpose of making said sale. On this occasion, besides your trustees and the auctioneer, there was only present the de-
453 fendant Luchs.

Whereupon your trustees withdrew the said sale and discontinued said advertisement for the purpose of advising the court of the facts and obtaining its further directions in the premises.

Your trustees have used their endeavours to attract attention to the sale and induce bidders to attend by personal efforts and solicitations, but without success. They therefore pray leave to sell the said note at private sale, and that an order may be passed herein to effect such purpose, such sale to be subject to ratification by the court.

ANDREW B. DUVALL, *Trustee.*
JOHN C. HEALD, *Trustee.*

Subscribed & sworn to before me this 21st day of December, 1878.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clerk.*

454 *Leave to Trustees to Sell Note at Private Sale.*

Filed Jan. 7, 1879. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

WM. TYLER
vs.
LEOPOLD LUCHS *et al.* } No.—. Equity.

Upon consideration of the report filed herein by the trustees heretofore appointed to sell the note in the proceedings mentioned, it is by the court, this 7th day of January, A. D. 1879, ordered and decreed that the said trustees have leave to sell the said note at private sale, such sale to be reported to this court for confirmation.

By the court:

McARTHUR, *Justice.*

Appeal to General Term.

TYLER
vs. } 4724. Equity.
LUCHS.

Nov. 18, 1878.

Enter an appeal to the gen. term on behalf of Constantine D. Bodisco from decree at special term.

Nov. 18, 1878.

Appeal entered as ordered.

BY THE CL'K.

455 "EX. A."

Offer to Purchase Note.

Filed Feb. 1, 1879. R. J. Meigs, clerk.

The Island of Cuba, tobacco, cigars, and smokers' articles, 525 Seventh street, opp. P. O. Dept., Luchs & Bro., proprietors.

WASHINGTON, D. C., *January 16th*, 1879.

Mrs. A. B. Duvall and J. C. Heald, trustees.

SIRS: I hereby offer two thousand dollars for the note of Charles A. McEwen, dated January 10th, 1873, for $6,000.00, payable to the order of James Lynch, which said note is held by you as trustees in the cause of Tyler *vs.* Luchs *et al.*, No. 4724, eq. doc. 15.

MAX LUCHS.

456 *Report of Trustees of Offer.*

Filed Feb'y 1, 1879. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
v.
LEOPOLD LUCHS *et al.* } No. 4724, Eq. Doc. 15.

The undersigned trustees respectfully submit that, in pursuance of the order passed in the above cause on the — day of December, 1878, they notified the parties in interest and other persons that they were authorized to sell the note described in said order at private sale and solicited offers for the same. They have received an offer for said note from Max Luchs of $2,000.00, as is shown by the paper filed herewith and named Exhibit "A," and they desire to submit the same to the court. They would state that they have endeavored to procure a better offer for said note, but have been unsuccessful.

ANDREW B. DUVALL,
J. C. HEALD,
Trustees.

457 Subscribed and sworn to before me this 1st day of February, 1879.

R. J. MEIGS,
Clerk S. C. D. C.,
By C. ROBINSON, JR.,
Ass't Clerk.

Notice of Motion for Acceptance of Offer.

Filed Feb. 6, 1879. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

TYLER
v.
LUCHS *et al.* } No. 4724, Eq. Doc.

Take notice that on Saturday, the 8th inst., at 11 o'clock a. m., or as soon thereafter as counsel, &c., I will ask the court to instruct the trustees (Duvall & Heald) to accept the offer of Max Luchs, as reported by the said trustees on February 1, 1879, for the note described in the proceedings in this cause, and to finally ratify said sale.

A. S. WORTHINGTON,
Sol'r for Def't Evans.

458 To Jos. H. Bradley, Esq., L. G. Hine, Esq., and Wm. D. Cassin, Esq.

Service acknowledged this 6th day of Feb'y, '79.

L. G. HINE,
Sol'r for Bodisco.
JOS. H. BRADLEY.
WM. D. CASSIN.

Trustees Ordered to Accept Offer.

Filed Feb. 21, 1879. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

WILLIAM TYLER
v.
LEOPOLD LUCHS *et al.* } No. 4724, Eq. Doc.

Upon motion of counsel for defendants and upon consideration of the report of the trustees, Duvall & Heald, filed on the 1st day of Feb., 1879, it is, this 21st day of February, 1879, ordered that said trustees be, and they are hereby, authorized and in-
459 structed to accept the offer of Max Luchs of $2,000 for the note for $6,000 described in the proceedings in this cause, and upon the payment of the purchase-money to the said trustees the sale to Max Luchs shall be absolute. It is further ordered that from the proceeds of said sale the said trustees shall first pay the costs of this suit, including the costs of the attempted public sale, and shall apply the residue to the payment of the liens upon said note in the order in which liens are established by the decree made in this cause on the 18th day of November, 1878.

By the court:

MACARTHUR, *Justice.*

460 *Decree Declaring Deed of Trust Null & Void and Appeal to Gen. Term.*

Filed May 13, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

CHRISTEINA MURPHY
v.
JANE LYNCH *et al.*
} No. 11397, Eq. Doc.

This cause came on to be heard at this term upon the pleadings and proofs and the consent decree made herein on the 8th day of July, 1889, and was argued by counsel for the complainant and for the defendant Jane Lynch and submitted to the court, and upon consideration thereof it is, this 13th day of May, 1891, ordered, adjudged, and decreed that the instrument of writing purporting to be the deed of trust dated the 26th day of August, 1874, and which was recorded on the first day of September, 1874, in the lands records of the District of Columbia, in Liber 760, folio 159, purporting to be executed and acknowledged by Elizabeth A. English, by Alexander English, acting as her attorney, is null and void,

461 and it is ordered, adjudged, and decreed that the defendants Jane Lynch, Mary Ann Bartlett, and Sarah R. Kahl, their heirs and assigns, be, and they are hereby, perpetually enjoined from taking any steps towards enforcing said deed of trust.

And it is further decreed that the fund in the registry of this court belongs to the estate of Peter Pippert, and *entitled* under his will passes to the complainant and the defendants, Edward Marsh and Florence Marsh, who shall have leave to apply hereafter at the foot of this decree for such further order as may be required.

From this decree the defendant Jane Lynch prays an appeal to this court in general term, which is allowed.

A. B. HAGNER,
Asso. Justice.

462 *Decree in General Term.*

Filed May 31, 1892.

In the Supreme Court of the District of Columbia, in General Term.

CHRISTEINA MURPHY
vs.
JANE LYNCH *et al.*
} No. 11397. In Equity.

This cause came on to be heard at this term and was argued by counsel for the respective parties and submitted to the court, and upon consideration thereof it is, this 31st day of May, 1892, ordered, adjudged, and decreed that the final decree made herein on the 13th day of May, 1891, by this court in special term, be, and it is hereby, in all things affirmed, with costs.

Appeal to the Supreme Court U. S.

And from this decree the defendant Jane Lynch in open court prays an appeal to the Supreme Court of the United States, which is allowed.

E. F. BINGHAM, *C. J.*

463 Filed June 30, 1892. J. R. Young, clerk.

In the Supreme Court of the District of Columbia, the 29th Day of June, 1892.

CHRISTEIANA MURPHY *et al.*
vs.
JANE LYNCH *et al.*
} No. —.

Know all men by these presents that we, Jane Lynch, Louisiana Bradford, and Martin P. King, are bound unto the above-named Christeina Murphy, executrix; Edwin Marsh, Florence Marsh, John R. Murphy, John W. Murphy, and Samuel E. Murphy in the sum of one thousand five hundred dollars ($1,500), to be paid to the said Christeina Murphy, executrix; Edwin Marsh, Florence Marsh, John R. Murphy, and Samuel E. Murphy, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 29th day of June, 1892.

Whereas the above-named Jane Lynch has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is such that if the above-named Jane Lynch shall prosecute the said appeal to effect and answer all damages and costs if she shall fail to make good her plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JANE LYNCH. [SEAL.]
MARTIN P. KING. [SEAL.]
LUZANA A. BRADFORD. [SEAL.]

Sealed and delivered in presence of—
ROB'T W. GRASTY.

Approved the 30th day of June, 1892.

E. F. BINGHAM,
Justice S. C. D. C.

464 UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Christeina Murphy is complainant and Jane Lynch, Millard F. Lynch, Mary Ann Bartlett, Sarah R. Kahl, John Penn Jones, Brainard H. Warner, George E. Emmons, Edward Marsh, a minor; Florence Marsh, a minor; Joseph R. Murphy, Catherine G. Paul, John W. Murphy, and Samuel E. Murphy, a minor, are defendants, as the same remain- upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court this 30th day of June, A. D. 1892.

J. R. YOUNG, *Clerk.*

Endorsed on cover: Case No. 15,068. District of Columbia supreme court. Term No., 129. Jane Lynch, appellant, *vs.* Christeina Murphy, executrix, *et al.* Filed June 30, 1892.

161 U.S. 247

Clerk's Supreme Court U. S.
FILED.
DEC 10 1895
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

JANE LYNCH, *Appellant*,
vs.
CHRISTEINA MURPHY *et al.*, *Appellees.* } No. 129.

BRIEF FOR APPELLANT.

CALDERON CARLISLE,
WM. G. JOHNSON,
Counsel for Appellant.

Pearson Printing Office, 9th and D sts.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

JANE LYNCH, *Appellant*,
vs.
CHRISTEINA MURPHY *et al.*, *Appellees.* } No. 129.

BRIEF FOR APPELLANT.

STATEMENT.

This case comes here by appeal from the Supreme Court of the District of Columbia.

A bill was filed in the court below by the executrix and trustee under the will of one Peter Pippert to have declared null and void a certain deed of trust conveying the east half of square 779, in this city, to secure notes to the amount of $4,000, held by the appellant, Jane Lynch. The trust was given under the following circumstances: In July, 1874, Pippert sold and conveyed to Elizabeth A. English and Andrew Schwartz the east half of square No. 779. Five hundred dollars in cash was paid by Alexander English, and a deed of trust to secure the balance of the purchase money was given by Alexander English as attorney for his wife, Elizabeth A. English, and by Schwartz.

A month afterward, on the 27th day of August, 1874, English purchased from James Lynch, the husband of appellant, a note of one McEuen for $6,000, secured by a deed of trust on a square on Capitol Hill, and for this note he paid to Lynch $1,000 cash and gave four promissory notes for $1,000 each to said Lynch, and secured them by a second deed of trust on Mrs. English's interest in the property conveyed to her by Pippert.

Though it appears that English was subsequently defrauded of this $6,000 note by one Tyler, it is fully proved that the face value of the note, with interest and all expenses of perfecting title, were realized by the parties who ultimately became the lawful holders.

The four Lynch notes have never been paid, and it is sought in this suit to have the trust securing them removed as a cloud on the title to the said east half of square 779.

The grounds upon which this relief is demanded are stated in the bill (Rec. p. 4) to be "*that the said James Lynch gave no consideration* for said notes, and that neither the said Elizabeth A. English nor the said Alexander English *received any consideration therefor.* But the complainant avers, upon information and belief, that, *on the contrary, said deed of trust* to said William W. Bean *and the four promissory notes* described therein *are part and parcel of the scheme by which said Alexander English attempted to defraud the said Peter Pippert,* as set out in the bill in equity aforesaid." (Eq. Cause 4266, found in the Record, pp. 95–109.)

"Upon information and belief, complainant avers that said Alexander English was without any proper or competent authority in law to execute said deed of trust to said William W. Bean in the name of said Elizabeth A. English." (Rec. p. 4.)

These allegations are each and all of them denied in the answer of Jane Lynch specifically, categorically, unequivocally, and with special distinctness and particu-

larity. The complainant *offered no evidence whatever in support of these allegations of the bill or in any respect relating thereto.*

On April 7, 1875, Pippert had filed a bill (4266 Eq.) against Schwartz and English and the trustees under the deed to secure the deferred purchase money, alleging that the sale and conveyance of the land to Schwartz and English had been procured by fraud, and praying that the conveyance should be declared null and void and be delivered up to be canceled, or that the deed of trust given to secure the deferred payments "*be reformed in a manner that shall be just and equitable.*" (Rec. p. 101.)

Upon an examination of the bill in the said cause (Eq. 4266, Rec. pp. 95–109) it will be found that the sole ground of complaint is that the deed of trust given for the security of the deferred purchase money was unfavorable to the vendor, and not such as he claims to have understood he was to receive. To this suit neither Lynch, nor the then holder of his notes, nor the trustees under the deed to secure them were made parties, though the said deed of trust had been duly recorded, and the record bound Pippert to take notice of the lien. Alexander English and his wife were made parties, but they were never served, and never had their day in court. Jurisdiction of English and wife was attempted to be obtained by publication, but this was not a proceeding *in rem.*

After Schwartz had filed an answer denying all the allegations of fraud, and without an iota of proof being taken in the cause, Pippert elected to rescind the sale and take back the property, and by consent of the counsel for Schwartz, a decree was entered in the cause declaring the conveyance to Schwartz *and English void,* and directing it to be delivered up to be canceled on the 11th of October, 1875, more than a year after the trust to secure Lynch had been executed and recorded.

Lynch was not a party to the sale by Pippert to English and Schwartz; had no part in or knowledge of the trans-

action. There was nothing on the face of the deeds to indicate any irregularity or put him upon notice or inquiry, *nor has there been a scintilla of evidence offered either in this or the other suit, tending to prove, or for the purpose of proving, any fraud in that transaction.*

Lynch was a *bona fide* purchaser, for value, of the equity of Elizabeth English, for which he paid six thousand dollars. His widow, the appellant, is a *bona fide* holder for value of the notes given to Lynch and secured by the deed of trust, the $6,000 note for which they were given in payment, being a note for purchase money, secured upon property in which she had and claimed an interest. (Rec. pp. 44–51.)

The facts established by the uncontradicted evidence in behalf of appellant are as follows:

That one Alexander English, a citizen of East Saginaw, Mich., who had been for many years engaged in profitable business there, and having a considerable estate, and being a widower somewhat advanced in years, married one Elizabeth A. FitzGerald, a lady much his junior, to whom he conveyed a considerable portion of his estate. She received from her father's estate about $6,000, but whether before or after her marriage does not appear. Subsequently, Alexander became much embarrassed and ultimately insolvent by reason of accommodation endorsements, *particularly those for his wife's brother*, Walter FitzGerald, on account of which he lost over eighteen thousand dollars. In this state of his affairs he undertook to set apart from his estate beyond the reach of creditors so much of his estate as he could for the benefit of his wife as "her divide," but retaining possession and control thereof under a power of attorney from her and managing it for the common benefit of both. In 1874 he came to Washington a stranger, and at the instance of one Schwartz purchased the real estate mentioned in the bill and paid therefor five hundred dollars ($500) in money, and executed the notes and deed of trust

for the deferred payments referred to in the bill. This money, the notes and deed of trust, went into the possession of complainant's devisor, who, with his wife, executed the deed dated July 27, 1874, and recorded July 28, 1874, and thereby conveyed the said land to Elizabeth A. English, the wife of Alexander, in fee. On the same day the deed of trust from English to Andrew Schwartz, Jr., and F. E. Lackey, to secure the deferred payments, was also recorded.

About a month later, James Lynch, being the owner of a promissory note for $6,000, made by one Charles A. McEuen, and secured by deed of trust upon a square of ground on Maryland avenue northeast, sold the said note to said Alexander English, who gave the said Lynch one thousand dollars ($1,000) in cash and the notes and deed of trust for four thousand dollars, ($4,000,) which are the objects of attack in complainant's bill. This transaction between Lynch and English and the one between English and Pippert were both in entire good faith, and the $6,000 note given by Lynch was genuine and valuable, the subsequent owner thereof, one Luchs, having recovered the entire amount thereof, principal, interest, and costs. The deed of trust to secure James Lynch involved in this suit was executed August 31, 1874, more than a month after the deed from Pippert to English had been executed and recorded, and the deed to secure Lynch was recorded the day after its date, September 1, 1874. In April, 1875, eight months after the conveyance by Pippert to English, and seven months after the execution and record of the deed of trust to secure James Lynch, complainant's devisor, Peter Pippert, filed the suit No. 4266 in equity against English and wife, Schwartz and the trustees under the deed of trust to secure Pippert the deferred purchase money. As already stated, neither James Lynch nor the trustee in the deed of trust to secure him the $4,000, nor this appellant, were made parties to said bill, and no reference was made in those proceedings to that deed of trust. That bill admits

the conveyance to English, the payment of the $500, and the execution of the notes for the deferred payments, and alleges that the negotiations for the sale to English were pending during three days. In the fourth paragraph of the bill Pippert, the plaintiff therein, after alleging that he agreed to sell the ground for 20 cents a foot, says that English "proposed to give the plaintiff (Pippert) 19 cents per square foot for this ground, with one-fourth cash and the balance in three equal instalments payable in three, six, and nine years, with interest at the rate of seven per cent. per annum; plaintiff (Pippert) agreed to this proposition, Schwartz representing that it would be a good price for the ground." Further on, in the same paragraph, Pippert says that on July 27, 1874, English informed him, Pippert, "that he found that he had not as much money as he thought he had, and thereupon proposed to pay the plaintiff (Pippert) $500 in cash and the balance in ten (10) equal instalments, payable, the first instalment, in three years after date, and the remainder annually thereafter." He then avers that he agreed to these terms, but says he did so upon certain representations made by Schwartz as to the terms of the deed of trust securing the notes, which representations he says were false; that it was done in a hurry, he desiring time to have the papers prepared by his counsel, but that the defendants urged haste, and he complied upon Schwartz's representation as to the terms of the deed of trust securing the deferred payments.

The bill throughout admits that there was a sale and conveyance to English, and this alleged false representation of Schwartz, as to the terms of the deed of trust, is the only ground for relief stated in the bill.

The fifth prayer of the bill, after asking that the deed from Pippert to Schwartz and English, and the deed of trust from them to Schwartz, Jr., and Lackey be set aside, prays as follows: "*Or, if it is considered that this relief cannot be had, then that your honors will decree that said deed*

of trust recorded in liber 759, *at folio* 68, *et seq., one of said land records, be reformed in a manner that shall be considered just and equitable.*"

A decree *pro confesso,* upon an order of publication, was passed against English and his wife, while Schwartz answered, denying, under oath, all the material charges in the bill, and averring that Pippert, before executing the deed or accepting the deed of trust, took them away for the avowed purpose of taking advice, and returned, saying that the papers were satisfactory. (Rec. p. 106.)

The present suit was instituted in October, 1888, more than fourteen years after the transactions to which it relates, and ten years after the death of James Lynch. About one year before the filing of the present suit, Mrs. English had become disabled from testifying, by reason of paralysis impairing her mind, so that the appellant is deprived in this suit of the benefit of these most important witnesses, when called upon to support transactions occurring fourteen years before, while, as shown by the record, the testimony of Alexander English was secured only under compulsion, by proceedings taken more than three thousand miles away.

By a consent decree in this cause, (Rec. pp. 34, 35,) the land was sold, and eight thousand dollars of the fund therefrom arising paid into court, and it was further decreed that said fund of eight thousand dollars "*as to all parties interested in said real estate shall stand in the place and stead of said real estate, and that if in this proceeding it shall ultimately be decided that the defendant Jane Lynch had a valid lien upon said real estate at the time the bill in this cause was filed for the sum of four thousand* (4,000) *dollars,* with interest as aforesaid or any part thereof, then said sum of eight thousand (8,000) dollars and the increase thereof, or so much thereof as shall be necessary, *shall be applied for the satisfaction of such lien.*" (Rec. p. 35.)

By this decree any occasion for a cross-bill was obviated.

Assignment of Errors.

I.

The court erred in adjudging and decreeing the deed of trust executed by English to secure Lynch to be null and void.

II.

The court erred in enjoining the appellant from enforcing said deed of trust.

III.

The court erred in decreeing the fund in the registry of the court under the consent decree to belong to the estate of Pippert.

IV.

The court erred in not decreeing said fund to be applied to the satisfaction of appellant's claim.

ARGUMENT.

Three grounds of attack are alleged in the bill against the validity of this Lynch trust, namely: (1) that the same was *without consideration;* (2) that it was part and parcel of the scheme of Alexander English *to defraud* Pippert, *as set out in the bill in equity aforesaid* (4266 Eq.); and (3) that Alexander English was without any proper or competent authority in law to execute said deed of trust. (Rec. p. 4.)

I.

Alleged want of consideration.

As to the allegation that the Lynch trust was without consideration:

This is positively denied by the answer of the appellant, Mrs. Lynch, (Rec. pp. 30, 31, 32,) and the particular consideration is there set forth, namely, the interest of James Lynch in other land in the city of Washington.

The complainant has not only failed to sustain over the denial of the answer the allegation of no consideration, but has absolutely failed to offer any evidence with reference thereto.

The appellant might well have rested upon her answer, but instead has, by commendable diligence, honestly laid before the court the true state of the case, namely, that James Lynch gave English a note for purchase money for a square of ground on Capitol Hill, on which said note was secured, (Schwartz, Rec. p. 38; Mrs. Lynch, Rec. p. 44; English, Rec. pp. 78, 79, 80,) and this appellant had an interest in that ground, as it had belonged to her father. (Rec. pp. 44–51.) This note was of actual value, Leopold Luchs and his brother Max Luchs having loaned $1,500 upon it, (Rec. p. 90,) and the note was afterward sold to them at public auction (Rec. p. 91;) and as shown by the record in Tyler *v.* Luchs, No. 4724, equity, offered in evidence, (Rec. pp. 113–158,) the property upon which the note was secured—square 936—was sold under the trust securing the note and bought in by the Luchs brothers, who realized the entire amount of the note over and above all expenses. (Rec. p. 92.)

It is to be remembered that this evidence is not contradicted or impeached, and the true consideration for the Lynch trust is conclusively established to be property of the value of six thousand dollars given up by Lynch and received by English.

Thus it will be seen that the complainant has not only failed to establish the allegation of a want of consideration, but the contrary has been affirmatively shown by the appellant, though she was under no obligation to do so.

II.

As to the allegation that the Lynch trust was part and parcel of the scheme of Alexander English to defraud Pippert, as set out in his bill against English in equity cause 4266.

The scheme to defraud set out in the bill in No. 4266 was not supported by any evidence whatever in that suit,

nor is the allegation in this suit attempted to be so supported unless the deeds and the proceedings in equity cause 4266 (Pippert *v.* English) were offered for that purpose. If that be so, they wholly fail to establish, or to tend to establish, any connection between the transactions of Pippert and English and English and Lynch.

The transaction between Pippert and English, even if it had been proved to be fraudulent, had been consummated more than a month before the Lynch trust was given, and the Lynch trust could not, therefore, possibly be in aid of that which was already fully accomplished. Moreover, it is nowhere alleged, nor is any evidence offered tending to show that Lynch was in any way connected with the original transactions between English and Pippert, nor that he ever had any knowledge whatever with respect thereto.

As before shown, Lynch gave English a secured note for $6,000, for the notes and deed of trust in controversy here, and English gave Lynch $1,000 in cash, in addition to said notes and deed of trust for said six thousand dollar note. This $1,000 was not derived from the Pippert property, but was money brought by English from Michigan, and was by Lynch turned over, the same day, to this appellant, she claiming an interest in the property for which the $6,000 note was given and on which it was secured. It is, therefore, inconceivable that this transaction between these two men, relating wholly and exclusively to the purchase by English from Lynch of a $6,000 note secured on other property, one month after the Pippert and English transactions were completed, whereby one parted with his secured note for $6,000, while the other parted with his $1,000 in cash and the notes involved in this suit, could in anywise be "part and parcel of the scheme of Alexander English to defraud Pippert," which scheme, if it ever existed, had been fully consummated for more than one month, and which scheme, according to the bill in 4266 equity was confined

to misrepresentations and fraud, not in the sale, but in the terms of the deed securing deferred payments, which was, until abrogated by Pippert himself, a paramount lien to the Lynch trust and so sought to be made by the alternative prayer in the present suit. (Prayer 2, Rec. p. 7.) Nor is there any evidence that there ever existed such a scheme on the part of English as is set out in 4266 equity. The answer specifically denies that there was, (Rec. p. 106,) and no evidence whatever was offered either in 4266 or in present suit in support of the allegation.

Schwartz, in his answer in 4266, says:

"As to the allegations contained in the fourth article of the bill the respondent says: 'On or about the first of July, A. D. 1874, the plaintiff called at the office of respondent and stated that he was the owner of the property referred to in the bill; that his children were cutting up badly, and that he desired to have this property sold and live upon the interest of the money. About the 20th of the same month this respondent submitted to the plaintiff a proposition, the terms of which are incorporated in the deed of trust referred to in the bill, which said proposition the plaintiff assented to, expressing himself well satisfied with the terms. *The plaintiff thereupon took the said deed of trust before execution from the office of respondent, stating that he desired to show it to some one, and returned it shortly afterwards, stating that it was all right except as to the number of feet, but he afterwards saw the deed was right in that respect.*'" And again: "Respondent (Schwartz) denies the allegations contained in the sixth article of the bill, and avers that the plaintiff was well informed of the contents of said deed of trust."

In this state of the case, and without any evidence being taken, a decree was entered, by consent of Schwartz, rescinding the sale to English and Schwartz. This old proceeding in equity is absolutely all that was offered in this case in any respect relating to plaintiff's allegation of fraud, specifically denied by the answer.

But as before shown, it was the intention and agreement of Pippert to sell and convey the land as he did, and for the price he did, and upon the terms stated, and the

alleged fraud being confined to the manner of securing the purchase money cannot affect a subsequent purchaser without notice, but he, on the contrary, gets a good title notwithstanding such fraud may in fact exist, of which, however, there is no evidence in either case.

It being admitted that the title to the property passed from Pippert to Elizabeth A. English, he having intentionally conveyed to English, and thereby invested her with the indicia of title, he cannot now be permitted to reassert his title against an innocent purchaser for value without notice, as is the appellant Lynch in this case, because he has been defrauded of his purchase money. Having placed it in the power of Mrs. English to convey to third persons, he and not they must bear the consequences of his carelessness.

Where one of two innocent parties must suffer by the wrong of a third, the loss must fall upon him who put it in the power of the third party to commit the wrong.

As said by this court in Calais Steamboat Co. *v.* Van Pelt, (2 Black, 374): "As respects third persons who have bought in good faith and for a valuable consideration, the rule is different. The question then arises between two innocent parties, and the equity of the case turns *against the party who has enabled* his agent *or any other person to hold himself forth to the world as having not only possession but the usual documentary evidence of property in the article.*"

This principle illustrates the inequitable character of the relief here sought.

Though it is out of the power of the court, in this case, and out of the power of appellant, in any proceeding, to have restored to appellant the six thousand dollars' worth of property parted with by Lynch on the faith of the title which Pippert had vested in English, the bill seeks to have the Lynch trust destroyed upon the sole ground that it is claimed, but not proved, that the conveyance to English was a fraud or misadventure, and the pleader,

well knowing such a bill would be demurrable, saved it, by *averments* that the Lynch trust was without consideration, and that Lynch was a party to the alleged fraud upon Pippert. But these averments were never even attempted to be supported by evidence, and the contrary is conclusively established.

It is submitted that the proceedings in 4266 equity, even if they proved fraud, which it is insisted they do not, were no evidence of fraud in *this* proceeding, where the fact of fraud was denied and proof demanded, because *those* proceedings, being *res inter alios acta*, are not evidence against this defendant, but all the averments in them are mere hearsay.

In addition to this, no proof whatever was taken in support of the fraud alleged in the old case, and the adjudication by the court was made as to one party upon default after publication, and as to the other by consent.

It is submitted that in that case the court acquired no jurisdiction over Alexander English or his wife. The proceeding was not a proceeding *in rem;* it was strictly *in personam*, to set aside an admitted contract between the parties, or, in the alternative, to reform that contract in accordance with the alleged original agreement, (Rec. p. 7,) and was demurrable on that ground.

Shields *v.* Barrow, 17 How. 143, 144.

But the decree, as against English, in that case is a mere nullity.

As said by this court in Hart *v.* Samson, (110 U. S. 154–155:) "Generally, if not universally, equity jurisdiction is exercised *in personam*, and not *in rem*, and depends upon the control of the court over the parties by reason of their presence or residence, and not upon the place where the land lies in regard to which the relief is sought. Upon a bill for the removal of a cloud upon the title, as upon a bill for the specific performance of an agreement to convey, the decree, unless otherwise expressly provided

by statute, is clearly not a judgment *in rem*, establishing the title to land, but operates *in personam* only, by restraining the defendant from asserting his claim and directing him to deliver up his deed to be canceled or execute a release to the plaintiff. * * * Such a decree being *in personam* merely, can only be supported against a person who is not a citizen or resident of the State in which it is rendered by actual service upon him within its jurisdiction, and a constructive service by publication in a newspaper is not sufficient."

It would seem, therefore, that the proceeding between Pippert and English in 4266 equity was wholly inefficacious to accomplish the extinguishment of the title voluntarily conveyed by Pippert by the deeds involved in that proceeding, but it is insisted that in any view the said proceedings are wholly inadmissible as evidence in support of the averments of fraud in the proceedings against this appellant or for any other purpose, and even if admitted wholly fail to prove or tend to prove any such fraud as is alleged in the bill in this cause or any fraud whatsoever.

That they could be effectual to extinguish the lien of Lynch, not a party to them, is not even pretended by complainant, who filed this bill upon the theory that the Lynch trust remained unaffected by anything done or attempted in the old suit.

III.

As to the power to mortgage under the power of attorney.

As to the third ground of attack alleged in the bill, "that Alexander English was without any proper or competent authority in law to execute said deed of trust," it is submitted that he did have full and competent authority in law and in fact so to do.

An inspection of the power of attorney shows it to be as broad and complete as could be required. That instrument authorized Alexander English (Rec. p. 21) "*to*

buy and sell real estate and merchandise and personal chattels, and *to carry on any kind of business at any place or places in the State of Michigan or elsewhere in the United States or the Dominion of Canada, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personally present.*"

The general rule that a power to sell is not a power to mortgage is not disputed, though it is subject to many exceptions and qualifications, but it is wholly inapplicable here. This was not a special power to sell real estate, but a general authority of the broadest character to buy and sell real estate, merchandise or personal chattels, under which terms would be included the right to buy the promissory note purchased by said English from Lynch, and also a general power *to carry on any kind of business in any place and to do any proper and necessary act in the conduct of any kind of business.*

Where such a general authority is given, a strict rule of construction as to the agent's powers, especially as between him and third persons, is not to be employed. The rule is well stated in Mechem on Agency, section 287:

"Viewing all the facts and circumstances, taking into consideration the object to be attained and the means to be adopted, giving due weight to such usages as were had in contemplation, considering whatever of extension or of modification has been wrought by subsequent conduct, is the act in controversy included within the limits, or, as it is ordinarily stated, within the scope of this authority? If it is, the principal is bound."

Upon this subject this court has said: "Although a grant of powers is sometimes to be construed strictly, yet it does not seem fit to fritter it away in a case like this by very nice and metaphysical distinctions, when the general tenor of the whole instrument was in favor of what was done under the power, and when the grantor has reaped

the benefit of it by receiving a larger price that otherwise would probably never have been paid."

Levy *v.* Beard, 8 How. 467.
Ibid, pp. 465–469, *passim.*
Maynard *v.* Mercer, 10 Nev. 33.
Schley *v.* Fryer, 100 N. Y. 72–75.

It is to be remembered also that in this case it is not the *principal* who is objecting to the acts of the agent, but *strangers to the power.*

Furthermore, it appears from the testimony in this case that it was the intention of the parties, when this power of attorney was executed, to give to English a general and unlimited authority to do everything which his wife could possibly do, (Rec. pp. 80, 81, 82,) and the obligation to give the broadest and most liberal construction to this power is heightened by the circumstance that the money employed by English was, as shown by the evidence, really his own; that he was operating in the name of his wife to make a living for them both, and using her name simply as a shield to protect the property from the claims of creditors.

It is submitted, therefore, that the complainant has wholly failed to establish any of the three grounds set out in the bill against the validity of the deed of trust in question.

IV.

The Lynch trust is a good equitable mortgage.

The only remaining objection to the Lynch trust is the defective character of the instrument. It is admitted in the answer that the instrument is inartificially drawn, and as a mortgage is technically defective. But it is submitted that the evidence in this case adduced in behalf of the appellant Lynch clearly establishes a good equitable mortgage, which can and must be sustained and enforced in this proceeding.

It is not open to the appellees here to object that no bill, either original or cross, has been filed to establish this equitable mortgage, because, being brought into court by the appellees, and having fully set up the existence of the equitable mortgage in her answer, Jane Lynch, the appellant, consented to the sale of the land involved upon the express consent of the appellees to a decree "*that if in this proceeding it shall ultimately be decided that the defendant Jane Lynch had a valid lien upon said real estate at the time the bill in this cause was filed, for the sum of four thousand* (4,000) *dollars*, with interest as aforesaid, or any part thereof, then said sum of eight thousand (8,000) dollars and the increase thereof, or so much thereof as shall be necessary, *shall be applied for the satisfaction of such lien.*" (Rec. p. 35.)

The evidence shows that Lynch sold to English a note for $6,000; that English agreed to pay for it by paying $1,000 in cash and $4,000 to be secured by his notes and the deed of trust on the Pippert property; that he received the note and became the owner of it; that he did pay the $1,000, and that he executed the trust in question for the purpose of securing the balance of the purchase money. The defendant has traced the note sold by Lynch to English into the hands of a Mr. Luchs, who became the purchaser of it for value through Tyler, in whose custody it was left by English; has shown that the note was of real value; that the property on which it was secured was sold under the trust and bought in by Luchs; that there were judical proceedings and a sale of the note in those proceedings, and that as the result of all these transactions the ultimate owner of the note recovered the full amount of $6,000, interest and costs. The transaction on both sides was *bona fide*, Lynch parting with a valuable note of $6,000, and English paying $1,000 in cash, and attempting to give the security now in question in this case. This transaction was wholly separate and apart from any transactions with Pippert, and was

in nowise connected with the transaction between English and Schwartz and Pippert, that transaction having been closed and the deeds recorded more than a month theretofore.

It has already been shown that the power of attorney is sufficient in law to authorize the execution by English of the trust in question. But even if it were insufficient, it appears from the testimony of English that he, in fact, had power to execute the mortgage in the name of his wife.

Under these circumstances it is obvious that the trust in question is an attempt on the part of English, having authority in fact, whether sufficiently expressed in the power of attorney or not, to pledge specific property for the payment of a just debt; that that attempt is evidenced in writing by the trust in question, duly recorded, and is good against all the world except prior creditors and purchasers without notice. Such is the well-settled rule of law.

Jones on Mortgages, Secs. 161 to 171.
Russell *v.* Russell, W. & T. Lead. Cas. (4th Am. ed.) 931, 954.
Ketcham *v.* St. Louis, 101 U. S. 316.
Tiernan *v.* Poor, 1 G. & J. 227, 228.
Brundidge *v.* Poor, 2 G. & J. 12, 13.

In Love *v.* The Sierra Nevada Lake Water and Mining Co., (32 Cal. 639–652,) the court say: "The instrument in suit is not a legal mortgage of the Sierra Nevada Lake Water and Mining Company. The paper is signed and sealed, not by the corporation, but by Bates and Atkinson, acting, so far as the signatures, seals, and testatum clause throw any light upon the subject, for themselves and in their own right. Though the mortgage does not bind the company at law, it by no means follows, however, that it may not be asserted against it in equity. We consider it as settled that an agreement under seal, made by an at-

torney for his principal, though inoperative at law for want of a formal execution in the name of the principal, is binding in equity if the attorney had authority; and, if the instrument so defectively executed be a conveyance of real estate, it will be sustained in equity as an agreement to convey, and will be good against the principal, subsequent lien creditors, and subsequent purchasers with notice. Or, more precisely stated, an agreement in writing to create a mortgage, or a mortgage defectively executed, or any imperfect attempt to create a mortgage, or to appropriate specific property to the discharge of a particular debt, will create a mortgage in equity or a specific lien which will have precedence of subsequent judgment creditors."

In Gales, Executor, *v.* Morris, (29 N. J. Equity, 222–224,) the court say: "An equitable mortgage will arise from non-payment of purchase money, and it may also be created by the deposit of title deeds. * * * It has also been held that an equitable mortgage may be created by an *unsuccessful attempt to make a valid mortgage deed*, or to appropriate specific property to the discharge of a particular debt."

But even if it could be successfully maintained that English did not have authority as attorney to execute the trust in question, his testimony shows that when he purchased the property of Pippert he paid for it with his own money, and that when he purchased the note from Lynch he paid for that with his own money. And in all the transactions that he had with regard to this property he was dealing with money which was really his own.

He was in reality, as matter of law and matter of fact, operating with his own property in the name of his wife, and that under these circumstances he undertook to pledge this particular property for this particular debt, and under the power of attorney he had a plain and specific authority to purchase the note from Lynch and the authority and obligation to pay for it, and the plain

right and duty to secure the performance of that obligation. This is all that the deed of trust in question attempted to do, and the plain equity of the defendant to have the agreed price of the property which was sold to English satisfied out of the security agreed and attempted to be given is not opposed by Mrs. English or by Alexander English, but by the complainant in this case, who is a mere volunteer, and whose grantor had, as already shown, by conveying the property, placed it in the power of English to secure from the appellant's husband the note in question.

V.

The complainant is barred by laches.

The inequitable situation of the complainant is further heightened by laches, which defence is expressly set up in the answer. This suit was instituted fourteen years after the transaction complained of, with full notice by the record of the existence of this trust, and nearly ten years after the death of James Lynch and several years after Elizabeth English had become mentally incompetent to testify by reason of disease. Here combine all the circumstances of lapse of time, death, and disability of parties, and staleness of the claim which make the plea of laches a good defence in equity.

Godden *v.* Kimmell, 99 U. S. 201.
Jenkins *v.* Pye, 12 Peters, 241.

The learned justice who passed the decree below took the view that laches are rather to be imputed to the appellant for her failure to enforce the mortgage. But it is submitted that it is the settled law in this jurisdiction that a mortgage may be enforced at any time within twenty years, although an action upon the debt itself would be barred in three years, and no circumstances are shown why she should have attempted to execute the trust within that time. Furthermore, the complainant was the

actor at the time of instituting, and throughout the suit, and by the terms of the consent decree the appellant was relieved from any possible necessity of becoming an actor even by cross-bill in the suit.

Complainant seeks to avoid the imputation of laches by alleging that complainants could not before have instituted proceedings, and the decision of Marks *v.* Main (4 Mackey, 559) and Ruckman and Corry (129 U. S. 387) are much relied on. It is submitted that these cases furnish no answer to the delay complained of. In the case of Marks *v.* Main another party was in possession, and in that case the court, in its opinion, admit that a bill *quia timet* to remove a cloud from title will lie "where the party is in possession and the cloud is with respect to something connected with his own title," (p. 570;) and the jurisdiction of equity to afford relief in such a case is expressly asserted by this court in the case of Holland *v.* Challen, (110 U. S. 15, 18, 19, 20.) So that complainant's testator could have proceeded against this appellant at the same time the bill was filed against Schwartz and English.

The case of Ruckman and Corry (129 U. S. 387) is not in point, as in that case, the party against whom laches was sought to be imputed was in possession of the real estate in direct violation of the deed attempted to be set up, and his possession was therefore adverse. The possession of Pippert was not against the rights of this appellant or of the deed of trust under which she claims, but was expressly in accordance with that contract which permitted the grantor and those claiming under him to remain in possession of the property; whereas, in Ruckman *v.* Corry, the possession was hostile to that of the parties seeking to impute laches.

But so far as a defendant is concerned, it is submitted there is no such thing as laches. Laches are faults imputable exclusively to a complainant and of which a defendant is legally incapable.

It is respectfully submitted that the decree of the court

below is palpably erroneous and inequitable. The bill proceeds upon the theory and allegation of want of consideration and fraud.

The denial of the answer under oath is not attempted to be overcome by any offer of evidence, while the appellant has proved a full consideration, the absolute absence of all fraud, and the impossibility of the particular fraud alleged.

The first proceeding (4266 Eq.) in which complainant charged, but did not attempt to prove fraud, sought to set aside a title which had passed to Mrs. English, but took no notice of the intervening equity of Lynch, which had attached and been of record for nearly a year.

The present proceeding reviews those charges of fraud, and, without any attempt being made to prove them, though denied under oath, the court, disregarding this intervening equity of Lynch, now, for the first time, brought before it, has undertaken to give the same effect to the decree in the first case that it would have had if the parties secured by the Lynch trust had been regularly before the court in that case and were bound by the decree.

Under these circumstances there is no principle upon which the decree can be sustained, and it is respectfully submitted that it should be reversed, and the cause remanded, with directions to allow the claim of appellant out of the fund in court reserved for that purpose.

CALDERON CARLISLE,
WM. G. JOHNSON,
Counsel for Appellant.

161 U.S. 247

DEC 17 1895
JAMES H. McKENNEY,
CLERK

161-247

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

JANE LYNCH, *Appellant*,
v.
CHRISTEINA MURPHY, *Executrix, et al.*
No. 129.

BRIEF FOR THE APPELLEES.

HENRY E. DAVIS,
Solicitor for Appellees Edward Marsh and Florence Marsh.
J. C. HEALD,
A. S. WORTHINGTON,
Solicitors for Appellee John Henry Murphy.

H. L. McQUEEN, PRINTER.

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BRIEF FOR THE APPELLEES.

Statement of the Case.

In July, 1878, Peter Pippert, now deceased, was the owner of the east half of Square 779 in the city of Washington. On the 27th of that month he and his wife executed a deed conveying this land to Elizabeth A. English, of East Saginaw, Michigan, and Andrew Schwartz, Senior, of Washington—Mrs. English under this deed taking a three-fourth interest and Schwartz one-fourth (Record, 56, 57). The price which Mrs. English and Schwartz were to pay for the land was $10,890.42. Only $500 of this was paid in cash (82). The remainder was paid by ten promissory notes purporting to be signed by Mrs. English, "by A. English, her attorney," and by Schwartz—the notes falling due in from three to thirteen years (110, 112). All these notes were for $1,000 each, except the last, which was for $1,390.42, and bore interest from date payable semi-annually. Payment of the notes was secured by a deed of trust, on the land

sold, executed by Mrs. English, "by A. English, her attorney," and by Schwartz (59–61). Both the above deeds were recorded shortly after they were executed (56, 95). Simultaneously there was recorded a power of attorney from Mrs. English to her husband (58, 59).

In the month of April following—1875—Pippert filed in the Supreme Court of the District of Columbia a bill in equity against Mrs. English and her husband, Alexander English, Schwartz and his wife, and the trustees under the deed of trust, in which bill Pippert charged that he had been defrauded in the transaction by English and Schwartz, and prayed, among other things, that his deed to Mrs. English and Schwartz should be cancelled, or if that could not be done, that the deed of trust should be reformed (96, 101). This bill also contained a prayer for general relief. Both English and his wife being out of the jurisdiction, they were proceeded against by publication, and in due season a decree *pro confesso* was taken against them (103, 105). Schwartz answered denying the fraud (106, 107). The trustees filed a formal answer saying that they had no knowledge concerning the matters set forth in the bill (108, 109). On October 11, 1875, a final decree was entered in the case declaring void both the deed from Pippert to Mrs. English and Schwartz and their deed of trust to secure him (109, 110).

The present controversy grows out of the fact that between the time that Pippert conveyed to Mrs. English and the filing of his bill in equity there was placed upon the land records of the District of Columbia a paper purporting to be a deed of trust executed by Mrs. English by her husband as attorney, conveying her three-fourths interest in the same premises to one Bean as trustee to secure an alleged indebtedness of $4,000 to James Lynch (62). This deed bears date August 26, 1874, and is signed 'Elizabeth A. English by A. English, her attorney." The

acknowledgment is before a justice of the peace, who certifies "that Elizabeth A. English by A. English, her attorney * * * acknowledged the same to be her act and deed" (64). The deed was recorded September 1, 1874 (62).

The indebtedness, the payment of which this instrument is claimed to secure, was represented by four notes of $1,000 each, all dated August 29, 1874, and payable, respectively, July 15, 1875, July 15, 1876, July 15, 1877, and July 15, 1878. These notes were all signed "Elizabeth A. English by A. English, her attorney" and bore interest at the rate of six per cent. per annum, payable semi-annually (3, 30, 48, 49).

It should be noted that while Pippert conveyed to Mrs. English and Schwartz, Schwartz did not unite either in the Lynch deed of trust or in the making of the notes referred to in that instrument.

Pippert died February 21, 1887 (54). By his will he devised a one-half interest in this property to his daughter Christeina Murphy (wife of John Henry Murphy), and made her his executrix (19, 20). James Lynch died on the 6th day of December, 1878 (30). During his lifetime no attempt was made to have the deed of trust to Bean enforced, although it contained the usual provision that upon default being made in the payment of any of the notes or any interest thereon the property might be sold and applied to the payment of the whole debt, whether due or not (63).

Ten years after Mr. Lynch's death his wife, Jane Lynch, claiming that these notes had been transferred to her by her husband in his lifetime, undertook to have the trust enforced by instructing the heirs of Bean (who had also died in the meantime) to sell in accordance with the terms of the deed of trust (4, 31). Thereupon—October 18, 1888—Christeina Murphy filed the bill in

this case, making Jane Lynch and the heirs of James Lynch and of Bean, parties defendant. She also named as defendants Edward Marsh and Florence Marsh, who together took a one-half interest in the property under the will of Peter Pippert. There were other defendants who were interested in a subsequent lien upon the property, but no question is brought to this court concerning their claims. Mrs. Murphy, in her bill, recited the foregoing facts, and prayed that Jane Lynch should be enjoined from enforcing the deed of trust and that it might be declared null and void (1, 7). She charged that Lynch gave no consideration for the notes (4); that the transaction between English and Bean was a part of the scheme by which English had attempted to defraud Pippert (4); and that English was without any proper or competent authority to execute the deed of trust to Bean (4).

In Mrs. Lynch's answer to the bill, she denied that her husband gave no consideration for the notes and deed of trust referred to, and averred that the consideration was the interest of her husband in other land in Washington (30). She also denied the charge of fraud (30, 31). She admitted that the deed of trust was not "technically sufficient in law to constitute a valid deed of trust," but insisted that English did have proper and competent authority to execute it and that, as a matter of fact, he was the real purchaser of the property from Pippert, having had it put in his wife's name to defraud his creditors; and that the transaction which resulted in the making of the deed of trust to Bean was really one between him (English) and Lynch in which Mrs. English's name was used only for the purpose of deceiving English's creditors (31). Upon these facts Mrs. Lynch claimed in her answer that the deed of trust constituted an equitable mortgage (31).

[In the answer of Mrs. Lynch, and by the proof submitted on her behalf, it appeared that at the time of this transaction James Lynch held a note for $6,000 made by one McEuen, which was secured by a deed of trust upon other land in the city of Washington; that McEuen had only a tax title to this property (52); that Lynch transferred it to English as of the value of $5,000 (79); that afterward, without the authority of English or his wife, it got into the hands of one Luchs (90); that Lynch went to Luchs and tried to get the note back, saying that an "Englishman" had got it from him improperly (92, 93); that the note subsequently became the subject of a long litigation between Luchs and other parties which resulted in the court appointing trustees to sell it (153); that the trustees twice offered it for sale and could get no purchaser (155); that the trustees were then authorized to sell it at private sale and could get no bid for it, except from Luchs himself, who paid them $2,000 for it at a time when the note, with interest added, was of the face value of over eight thousand dollars (157, 158).]

Pending the suit, by consent of all parties the property was sold, and out of the proceeds the sum of $8,000 was held to await the determination of this controversy between Christeina Murphy and Jane Lynch (34, 35).

Evidence was taken by both parties to the suit. On the final hearing in the Supreme Court of the District of Columbia in Special Term a decree was entered declaring the Lynch deed of trust null and void and enjoining any proceedings to enforce it. This decree further directed that the fund in the Registry of the court belonged to the estate of Peter Pippert (159). From this decree Jane Lynch alone appealed to the Court in General Term, and there on the 31st day of May, 1892, the decree of the Special Term was in all

things affirmed (159). Thereupon Jane Lynch took her appeal to this court.

Since the record here was printed Christeina Murphy has died, leaving a will making her husband, John Henry Murphy, her executor and sole devisee, and by proper proceedings he has been made a party in her place.

Argument.

I.

The questions involved in this case being mainly questions of fact and having been decided in favor of the appellees, both by the Special Term and by the General Term of the Supreme Court of the District, the decree below will not be disturbed unless the error is clear.

This has always been the rule in this court in admiralty cases when an appeal was allowed from the District Court to the Circuit Court and from the latter court to this. It has been applied in cases coming from the State Courts where the finding of the court of original jurisdiction was affirmed by the Supreme Court of the State (Lammers *v.* Nissen, Sup. Ct. Rep., Lawyers' ed., Book 25, p. 562), and it has also been followed in the case of a bill in equity filed in a District Court when the decree of that court was affirmed by the Circuit Court and then an appeal was taken here (Dravo *v.* Fabel, 132 U. S., 487).

Even in cases where the first finding of questions of fact is by a master or auditor whose conclusions have been concurred in by the Circuit Court, this court has uniformly held that where the master and the Circuit Court concur it will not interfere, unless the mistake be palpable.

The present case is a strong one for the application of this rule. The amount involved at the time of the decree in the General Term was but a trifle over $8,000. The record covers 160 printed pages and embraces the proceedings in two equity causes besides the one under consideration, one of these records having been offered in evidence by the appellant and the other by the appellees.

II.

The power of attorney from Mrs. English to her husband under which the Lynch deed of trust was executed was in itself void, and was further invalid to affect real estate in the District of Columbia, because the husband did not unite with the wife in its execution; because she did not acknowledge it privily and apart from her husband; and because what purports to be the wife's acknowledgment thereof was made beyond the limits of the District within the United States, and the certificate thereof is unaccompanied by the certificate of any officer having cognizance of the fact that at the date of the acknowledgment the officer taking the same was in fact the officer he purported to be.

The law on this subject in force in the District of Columbia in 1874, when this power of attorney and the Lynch deed of trust were executed, was the Maryland Act of 1715, Chap. 47, Sec. 11, and Sections 443, 450 and 451 of the Revised Statutes of the United States relating to the District of Columbia.

The Maryland Act is as follows:

"XI. *Provided always,* that if any *feme-covert* be named as a grantor in any such writing indented, the same shall not be in force to debar her or her heirs, except upon her acknowledgment of the same, and the person or persons taking such her acknowledgment, shall examine her privately, out of the hearing of her husband, 'whether

she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of, or ill usage, by her husband or fear of his displeasure?' And that the person or persons so examining her shall, (in a note or certificate of the taking of said acknowledgment,) certify her examination and acknowledgment thereupon, and that such certificate be likewise enrolled upon record; in which case, and by such acknowledgments and certificates, *feme-coverts* shall be barred, and not otherwise, and shall also be barred of their dower by such like acknowledgment, where they have only a right of dower in the estate conveyed, although not named in the deed thereof, anything herein contained to the contrary notwithstanding."

And the sections of the Revised Statutes of the United States relating to the District of Columbia above mentioned, are as follows:

"SEC. 443. When acknowledgments are made beyond the limits of the District within the United States, the certificate of the same shall be accompanied by a certificate of the register, clerk, or other public officer having cognizance of the fact, under his official seal, that, at the date of the acknowledgment, the officer taking the same, was, in fact, the officer he purported to be.

* * * * * *

"SEC. 450. When any married woman shall be a party executing a deed for the conveyance of real estate or interest therein, and shall only be relinquishing her right of dower, or when she shall be a party with her husband to any deed, it shall be the duty of the officer authorized to take acknowledgments, before whom she may appear, to examine her privily and apart from her husband, and to explain to her the deed fully.

"SEC. 451. If, upon such privy examination and explanation, she shall acknowledge the deed to be her act and deed, and shall declare that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it, the officer shall certify such examination, acknowledgment, and declaration by a certificate an-

nexed to the deed, and under his hand and seal, to the following effect:

"——— county (or city, &c.) to wit:

"I, A B, a justice of the peace, (or other prescribed officer, giving title) in the county (or city, &c.) aforesaid, in the State (or Territory, &c.) of———, do hereby certify that C D, the wife of E F, party to a certain deed bearing date on the day——of———, and hereunto annexed, personally appeared before me in the county (or city, &c.) aforesaid, the said C D being well known to me as (or proved by the oaths of credible witnesses before me to be) the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said E F, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it. Given under my hand and seal this —— day of ——. A B (Seal)."

The effect of the Maryland Act in connection with the incapacity of a woman at common law to execute any instrument affecting her land except by deed jointly with her husband, was decided in this court by a case which came up from the District of Columbia in 1828 (Rhea *v.* Rhenner, 1 Pet., 105). It is there held that "by the laws of Maryland, which must govern in this case, a married woman can not dispose of real property without the consent of her husband; nor can she execute a good and valid deed to pass real estate unless he shall join with her in the deed. The separate examination and other solemnities required by law are indispensable and must not be omitted."

It hardly needs to be added that a power of attorney by which a married woman authorizes another to sell and convey her real estate in her name is no exception to the general rule. This precise point was, however, decided in Mexia *v.* Oliver, 148 U. S., 664. That case

came from Texas, where the law on this subject was the same in effect as it was in this District in 1874.

It follows that the averment of the bill in this case that English was without any proper or competent authority in law to execute the Lynch trust in his wife's name, is fully sustained. The power of attorney in question, with the acknowledgment of Mrs. Lynch, will be found on pp. 58 and 59 of the Record. It will be seen that not only is the certificate of the notary public taking the acknowledgment unaccompanied by the certificate required by the statute, but also that the seal of the notary himself is wanting.

III.

The Lynch deed of trust is void for the further reason that the power of attorney, in supposed pursuance of which it was executed, authorizes English as to real estate to sell only, and does not empower him to mortgage. While this general rule is admitted in the brief for the appellant we cite the following authorities.

Jones on Mortgages, section 129.
Wood *v.* Goodridge, 6 Cush., 117.
White *v.* Jacques, 129 Mass., 286.
Terry *v.* Liabel, 31 N. J. Eq., 556.
Insurance Co. *v.* Bay, 4 N. Y., 19.
Kinney *v.* Matthews, 69 Mo., 520.
Patapsco Co. *v.* Morrison, 2 Woods, 395.
Stokes *v.* Payne, 58 Miss., 614.
Bloomer *v.* Waldron, 3 Hill, 361.

In this case the objection to the instrument executed by the agent is stronger than if it were a mere mortgage, for it contains a power to a third person to sell at his discretion in case of default in the payment of the debt secured and therefore violates the rule against the delegation of delegated authority.

IV.

The answer of Jane Lynch in this case admits that this deed of trust is invalid.

This admission (31) rendered it unnecessary for the complainant to offer any proof on the subject.

V.

The claim made in the answer that the Lynch trust may be enforced in this proceeding as an equitable mortgage must fail for the following reasons:

1. The averments of the answer upon which the claim of equitable mortgage is based are clearly disproved by the testimony submitted by the appellant herself. In the first place, Schwartz, who acted in this matter as the agent of Lynch and received a commission from him therefor (39), testified in the most positive terms that English represented himself to be acting for his wife; "that she had the money and he was doing the business for her"; and that both he (Schwartz) and Lynch understood this and acted accordingly, relying wholly upon the power of attorney as giving valid authority from Mrs English to her husband to execute the deed of trust (40, 43). The only other witness on this subject was English himself, who testified that his wife sent him the money which he used in his real estate operations in Washington (67, 72, 81); that this money was deposited in a bank in Washington in Mrs. English's name, and came from her sources (81); that he intended that these notes and property should be hers—"it was her right, because she was worth more than I was when we were married" (82); that Lynch dealt with him (English) as agent for Mrs. English under that power of attorney (83); that the $6,000 McEuen note and the deed of trust securing it "belongs to my wife now

just like it always did—she never sold the same nor gave authority to anybody else to sell it" (86); that the property in East Saginaw, Michigan, the proceeds of which Mrs. English sent to her husband in Washington, belonged to Mrs. English (86); and that he acted there for his wife and not for himself (86). It passes our comprehension how it can be claimed in the face of this testimony that English himself owned the land that was purchased from Pippert; that Lynch dealt with English as though it were English's property; and that they both understood this and used Mrs. English's name as a cover. Yet this is the ground and the only ground upon which it is claimed in the answer that this deed of trust can be sustained even as an equitable mortgage (31).

2. And even if it were true that in dealing with Pippert and Lynch in his wife's name English acted only nominally for his wife, so as to keep his creditors from reaching his property, we do not see how that can help the appellant. If Lynch knew this and participated in the fraud, a court of equity would leave him where he placed himself. If he did not know it and supposed the property to be Mrs. English's, neither he nor his assignee can claim that he was dealing with English and supposed the property to be his.

3. Finally, if we assume the facts in regard to this transaction to be precisely as stated in the answer, there is no foundation for the claim that the deed of trust could, in equity, be enforced as a mortgage. There was no defect in the instrument. On the contrary, it was precisely what was intended, and where parties deliberately adopt such means of securing a debt by an instrument which fails, not because of any defect in the paper itself, but because it does not have the legal effect which they anticipated, equity affords no relief. (Hunt *vs.* Rousmaniere's Administrator, 1 Pet., 14.)

VI.

The right of James Lynch to have the deed of trust in question declared an equitable mortgage, if it ever existed, has been lost by laches on his part during his lifetime and on the part of his widow, the appellant, since his death.

The deed of trust in question was dated and acknowledged in August, 1874, and was recorded September 1, 1874 (62–64). The four notes of $1,000 each, the payment of which it purports to secure, fell due in the month of July of the years 1875, 1876, 1877, and 1878, respectively. They all bore interest payable semi-annually (62). Lynch was a justice of the peace, residing in Washington, and lived until December, 1878 — about five months after the last of the notes to mature was due (30). His widow, who claims to have held and owned the notes from a period anterior to his death, also resided in Washington, and made no effort to establish any lien or claim against the land in question under the so-called deed of trust until just before the bill in this case was filed in October, 1888. The deed of trust, it will be remembered, provided for a sale and payment of the entire indebtedness out of the proceeds of sale upon any default with respect to any note or the interest thereon (63). There was, therefore, a delay of fourteen years from the time of the first default and ten years after the last default. Neither in the answer of Mrs. Lynch in this case, nor in the evidence, is there the suggestion even of any reason for this delay. Under the decisions of this court, too numerous and too well known to require citation, this unexplained delay is fatal to the claim of an equitable mortgage, and on that ground alone the decree below should be affirmed.

The appellant's counsel ingeniously seek to use this argument against the appellees, asserting that, although

Peter Pippert and his devisees were in possession of the property through all this period, it was neglect on their part not to have filed earlier a bill to remove this cloud on their title. But in this connection the counsel for the appellant have to make two assumptions which are entirely unwarranted.

In the first place they assume that Pippert had knowledge of the Lynch trust when he filed his bill against Alexander English and his wife and Schwartz, and had the deed to Mrs. English, and her deed of trust given at the same time, declared void, and that he continued to have this knowledge while he lived. In assuming this, counsel take it for granted that because the Lynch trust was of record Pippert is to be charged with constructive notice, whether he had actual notice or not. But this can not be, because the answer admits that the Lynch deed was not good as a deed of trust. We certainly need not refer to the books on the proposition that a deed which is fatally defective (and as shown below, not acknowledged so as to entitle it to record) is not constructive notice because it is recorded. The doctrine of constructive notice applies only to deeds that are valid and that are entitled to be recorded. And as to actual notice, the only testimony in the case is that of Pippert's daughter, Christeina Murphy, who says that her father knew nothing of the Lynch trust until about two months before he died, when he endeavored to make a sale of the property, and the proposed purchasers having the title searched found that deed on record (55, 56). Pippert died in February, 1887 (54). Before his death he brought a suit to have the Lynch trust declared void (56). For reasons which do not appear in this record that suit was afterwards abandoned and the present one brought in its place.

The other unfounded assumption relied upon by ap-

pellant's counsel is that, since (as they claim) a deed of trust may be enforced at any time within twenty years after it is made and recorded, neither James Lynch nor his widow afterwards was under any obligation to go into court and establish his or her rights under that deed of trust or to ask the trustee, Bean, or his heirs, to sell under the trust. The obvious fallacy here is that Mrs. Lynch, in her answer in this case, and the counsel, in their brief, admit here, as they admitted in the court below,—and the fact is as we have seen—that they have no deed of trust. The only right that either Lynch or his widow had, on their own showing, was to go into equity and have a lien established. And that right, surely, is one that will be lost by laches.

So far as Pippert and his devisees are concerned, their possession was notice of their claim to all the world. They were under no obligation to assert their rights against Lynch or his assignee until they might "find occasion to do so."

Ruckman *v.* Corry, 129 U. S., 387.
Marks *v.* Main, 4 Mackey, 559.
Michie *v.* Ellair, 54 Mich., 518.
Newall *v.* Montgomery, 129 Ill., 58.
Wilson *v.* Byers, 76 Ill., 84.

"An equitable claim [even] united to possession does not decay by time but grows in strength as it grows in years until it becomes an indefeasible title." (Barbour *v.* Whitlock, 4 T. B. Mon., 181.)

Here again appellant's counsel seek to get out of their difficulty by assuming that the instrument under which the appellant claims is a valid deed of trust in the face of her admission in her answer—and in face of the fact—that it is invalid. The claim is that since under this instrument "The grantor and those claiming under him"

are allowed to remain in possession, the occupancy of the premises by Pippert and his devisees was in pursuance of the terms of the instrument and not hostile to it, as was the case in Ruckman *v.* Corry, *supra*; but manifestly, since the deed of trust was invalid, this doctrine has no application; and besides, the proceedings and decree in the suit brought by Pippert against English and his wife and Schwartz were notice to everybody, Lynch included, that he, Pippert, remained in possession after that decree, not as claiming under Mrs. English, but by virtue of the fact that the deed to Mrs. English had been declared void.

VII.

The decree in Pippert v. *English* (*Rec. 109, 110*) *was not invalid because English and his wife were brought in only by publication.*

On this point counsel for the appellant rely upon Hart *v.* Sansom, 110 U. S., 151. That case does not help them, however, because it is conceded in the opinion of the court that the decree there in question would have been binding in the courts of the State in which the decree was rendered and was assailable only in the courts of other States and in the Federal Courts. In the case at bar the question is raised in the very court which entered the decree, the Supreme Court of the District of Columbia, holding a Special Term in Equity.

Moreover, this court, in Arndt *v.* Griggs, 134 U. S., 316, 320, 327, 328, explains and distinguishes Hart *v.* Sansom. The case of Arndt *v.* Griggs was an action to recover possession of land and to quiet title, and the validity of a decree upon which the case depended was assailed because it was rendered on service by publication only. Speaking to this point the court says (p. 320):

"But it is earnestly contended that no decree in such a case, rendered on service by publication only, is valid or can be recognized in the Federal Courts. And Hart *v.* Sansom, 110 U. S., 151, is relied on as authority for this proposition. The propositions are, that an action to quiet title is a suit in equity; that equity acts upon the person; and that the person is not brought into court by service by publication alone.

"While these propositions are doubtless correct as statements of the general rules respecting bills to quiet title, and proceedings in courts of equity, they are not applicable or controlling here. The question is not what a court of equity, by virtue of its general powers and in the absence of a statute, might do, but it is, what jurisdiction has a State over title to real estate within its limits, and what jurisdiction may it give by statute to its own courts, to determine the validity and extent of the claims of non-residents to such real estate? If a State has no power to bring a non-resident into its courts for any purposes by publication, it is impotent to perfect the titles of real estate within its limits held by its own citizens; and a cloud cast upon such title by a claim of a non-resident will remain for all time a cloud, unless such non-resident shall voluntarily come into its courts for the purpose of having it adjudicated. But no such imperfections attend the sovereignty of the State. It has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subjection to its rules concerning the holding, the transfer, liability to obligations, private or public, and the modes of establishing titles thereto. It can not bring the person of a non-resident within its limits—its process goes not out beyond its borders—but it may determine the extent of his title to real estate within its limits; and for the purpose of such determination may provide any reasonable methods of imparting notice. The well-being of every community requires that the title of real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. The duty of accomplishing this is local in its nature; it is not

a matter of national concern or vested in the general government; it remains with the State; and as this duty is one of the State, the manner of discharging it must be determined by the State, and no proceeding which it provides can be declared invalid, unless in conflict with some special inhibitions of the Constitution, or against natural justice. So it has been held repeatedly that the procedure established by the State, in this respect, is binding upon the Federal Courts."

And after examining authorities, the court proceeds (pp. 327–328):

"These various decisions of this court establish that, in its judgment, a State has power by statute to provide for the adjudication of titles to real estate within its limits as against non-residents who are brought into court only by publication; and that is all that is necessary to sustain the validity of the decree in question in this case.

"Nothing inconsistent with this doctrine was decided in Hart *v.* Sansom."

The law in force in the District of Columbia at the time of the filing of the bill in Pippert *v.* English was the Act of Congress of February 22, 1867, now Sec. 787 of the Revised Statutes of the United States relating to the District of Columbia, and is as follows:

"Publication may be substituted for personal service of process upon any defendant who can not be found, in suits for partition, divorce, by attachment, for the foreclosure of mortgages and deeds of trust, for the enforcement of mechanic's liens and all other liens against real or personal property, and in all actions at law or in equity which have for their immediate object the enforcement or the establishment of any lawful right, claim, or demand, to or against the real or personal property within the jurisdiction of the court."

VIII.

Pippert, having by his proceeding against English, given up the deed of trust executed by English and Schwartz to secure him the deferred purchase money on the fraudulent purchase which was vacated in the proceeding instituted by him; and the deed of trust to Bean and the power of attorney under which it purported to be executed, being invalid and insufficiently acknowledged; and no attempt having been made to enforce that deed of trust—Pippert was not chargeable with notice thereof; and from and after the decree vacating the transaction between himself and Mrs. English and Schwartz, he stood in the position of a bona fide purchaser for value without notice.

Accordingly, the setting up of the invalid, or as counsel for the appellant contend, imperfect deed of trust against Pippert or his successors in title as an equitable mortgage would be contrary to equity. As the case stood at the time Pippert filed his bill, he was the holder of a deed of trust securing him $10,390.42, which was the entire purchase money in the transaction with Mrs. English and Schwartz, with the exception of $500 apparently paid in cash. If, therefore, this deed of trust had been enforced, Pippert would have doubtless received back his property; at any rate he would have received the whole of the deferred purchase money with interest. Even if he had had no deed of trust he had a vendor's lien. The surrender of this security by the proceedings in the suit against English was not only a good but a full consideration for the land, and puts him in the position of having paid for the same all it was worth, without notice of Lynch's alleged equity.

IX.

A further difficulty in the way of establishing the invalid deed of trust as an equitable mortgage lies in the fact that the notes purporting to be secured by that deed were made payable to the order of James Lynch, and the notes only, and not the equity, were transferred to his wife, the defendant.

The only person in law who could bring a suit to establish the deed of trust in question as an equitable mortgage, was James Lynch, and he could not assign that right to his wife or anyone else so as to give the assignee the right to bring such a suit in his own name.

Hayward *v.* Andrews, 106 U. S., 672.
Bailor *v.* Daly, 7 Mackey, 175.
2 Story eq., Sec. 1040 h.

And Mrs. Lynch as assignee can not have, by virtue of her position as a defendant, any better right in respect of asserting an equitable mortgage than she would have were she an actor in a proceeding looking to that end. As she is defendant in her own name and right she is in no position to assert an equitable mortgage.

Even if James Lynch could have assigned to his wife such a right he did not do it nor attempt to do it. If it existed it descended to his heirs. They were parties to this suit and have not appealed from the decree below.

X.

One of the charges made in the bill is that the execution of the Lynch trust was part and parcel of the scheme by which English attempted to defraud Pippert, as set out in the equity proceedings between them. The appellant's counsel are in error when they say there was no evidence to support that charge.

As already pointed out, Pippert sold the property involved for $10,890.42. This was on July, 27, 1874. At the same time a deed of trust was executed to secure Pippert

$10,390.42, being within $500 of the purchase price. Within one day less than one month thereafter the Lynch loan purports to have been made. And while the indebtedness to Pippert representing the deferred purchase money was made payable in from three to thirteen years after the date of the transaction, the Lynch notes were all made payable by the 15th day of July, 1878, or within less than four years after the date of Pippert's deed.

It is inconceivable that Lynch should have loaned in August on the property a sum which would make it bear incumbrances aggregating $3,500 more than its purchase price a month previous. He was, moreover, chargeable with notice of the deed from Pippert, which showed on its face the purchase price of the whole to be $10,890.42, while his security was only on three-fourths of the property. These facts in connection with the history of the McEuen note for $6,000 (*Supra*, p. 5) indicate clearly that the transaction between English and Lynch was a dishonest one. Certainly it bears such ear marks of fraud that if Lynch in his lifetime and before Pippert filed his bill, had sought in a proceeding in equity against Pippert and English and his wife to have his defective deed of trust declared an equitable mortgage he would have been required to explain these circumstances before he could get relief. But no explanation of them is made here, and two courts having found against the appellant on the issue of equitable mortgage or not this court, under the principles laid down under the first heading in this brief, will not interfere.

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